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ABSTRACT

This document presents North Carolina regulations governing educational programs and services for children with special needs. Individual sections cover the following areas: definitions; identification, screening, evaluation and placement; observation; initial conference prior to school-based or preschool transition/placement committee referral; referral; school-based committee for students ages 5 and older; administrative placement committee for school-age students; preschool transition/placement committee; comprehensive screening and evaluation; special identification procedures; required and recommended screening and evaluation for initial placement; reevaluation; Individualized Education Program for children with disabilities; group education program for academically gifted students; written education program for pregnant students; confidentiality and access to records; continuum of programs and services and the least restrictive environment; maximum class size; due process procedures for parents and children; surrogate parents; agencies responsible for administration of procedures; free and appropriate services; disciplinary suspensions; annual census and listing of students; joint planning; private schools--standards and state board approval; responsibilities of the Exceptional Children Division; qualifications and licensure of educational personnel; categorical exceptional children funds for local education agencies; transportation; materials, supplies and equipment; funds to other departments; organization and administrative structure of Governor's Schools; program compliance visit; and Willie M. Class members. (DB)

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Procedures

Governing Programs and Services for Children with Special Needs

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SECTION .1500 - PROCEDURES GOVERNING PROGRAMS AND SERVICES FOR CHILDREN WITH SPECIAL NEEDS

.1501 DEFINITIONS

A. Children with Special Needs. The term "children with special needs" includes, without limitation, all children who, because of permanent or temporary mental, physical or emotional disabilities, need special education, are unable to have all their educational needs met in a regular class without special education or related services, or are unable to be adequately educated in the public schools. It includes those who are academically gifted, autistic, behaviorally-emotionally handicapped, deaf-blind, hearing impaired, mentally handicapped, multihandicapped, orthopedically impaired, other health impaired, pregnant, specific learning disabled, speech-language impaired, traumatic brain injured and visually impaired. The term "preschool children with disabilities" includes, without limitation, all 3- and 4-year-old children and those 5-year-old children who are ineligible for kindergarten and who because of permanent or temporary cognitive, communication, social/ emotional and/or adaptive disabilities are unable to have all of their developmental needs met in a natural environment without special education and related services. It includes preschool children who are delayed/atypical or those who are autistic, deaf-blind, hearing impaired, other health impaired, orthopedically impaired, speech-language impaired, visually impaired, or traumatic brain-injured. Preschool children with disabilities become eligible for services upon reaching their third birthday.

NOTE: Except as noted, the definitions of disabling conditions for preschool children remain the same as those for school-age children.

The terms used in this definition are defined as follows:

(1) Academically Gifted. Academically gifted students are defined as those who demonstrate or have the potential to demonstrate outstanding intellectual aptitude and specific academic ability. In order to develop their abilities, these students may require differentiated educational services beyond those ordinarily provided by the regular school program.

NOTE: Not applicable for preschool children.

(2) Autistic. Autism is a developmental disability which significantly affects verbal and non-verbal communication and social interaction, generally evident before age three, and adversely affects educational performance. Characteristics of autism include: irregularities and impairments in communication, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not include children with characteristics of the disability "behaviorally-emotionally handicapped".

(3) Behaviorally-Emotionally Handicapped. School-age students who, after receiving specially designed educational support services and intervention strategies in the regular educational setting, still exhibit patterns of situationally inappropriate interpersonal or intrapersonal behavior of such frequency, duration, and intensity to disrupt the student's own learning process. Frequency, duration, and intensity are long-standing patterns of behavior which occur regularly and often enough to interfere consistently with the student's own learning process. A behavioral-emotional handicap is evidenced by one or more of the following characteristics which cannot be attributed primarily to physical,

sensory, or intellectual deficits:

(a) inability to achieve adequate academic progress (not due to a learning disability);
(b) inability to maintain satisfactory interpersonal and/or intrapersonal relationships;
(c) inappropriate or immature types of behavior or feelings under normal conditions;
(d) a general pervasive mood of unhappiness or depression;
(e) a tendency to develop physical symptoms, pains or fears associated with personal or school problems.

The term does not include the socially maladjusted student unless it is determined that he/she is also behaviorally-emotionally handicapped.

NOTE: Not applicable for preschool children.

(4) Deaf-Blind. Deaf-blind students have concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(5) Hearing Impaired. Hearing impaired children are those with hearing losses which are disabling educationally and developmentally and who, with or without amplification, may require various instructional modifications and related services in order to make full use of their learning opportunities. Hearing impaired is a generic term which includes all hearing losses ranging from mild to profound.

(6) Mentally Handicapped. For school-age students, mentally handicapped refers to significantly subaverage general cognitive functioning and a reduced rate of learning. This condition exists concurrently with deficits in adaptive behavior, is manifested during the developmental period, and adversely affects the student's educational performance.

NOTE: Not applicable for preschool children.

(7) Multihandicapped. Multihandicapped students have a pervasive primary disability that is cognitive and/or behavioral in combination with one or more other disabilities (such as mentally handicapped, behaviorally-emotionally handicapped, mentally handicapped, blind, etc.), the combination of which causes such developmental and educational problems that the children cannot be accommodated in special programs that primarily serve one area of disability.

NOTE: Not applicable for preschool children.

(8) Orthopedically Impaired. School-age orthopedically impaired children possess a severe orthopedic impairment which adversely affects their educational performance. The term includes impairments caused by congenital abnormalities and impairments from other causes. Preschool children who are orthopedically impaired have an orthopedic impairment which adversely affects physical and motor development and which interferes with the acquisition of skills. The term includes impairments caused by congenital abnormalities and impairments from other causes.

(9) Other Health Impaired. Other health impaired students have chronic or acute health problems which cause limited strength, vitality or alertness to such an extent that special educational services are necessary. The health problems may include heart conditions, chronic lung disease, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, genetic impairments or some other illness which may cause a student to have limited strength, vitality or alertness, adversely affecting educational performance or developmental progress.

(10) Pregnant Students. Pregnant students with special educational needs are those who, because of their pregnancy, require special education and/or related services other than that which can be provided through regular education services.

(11) Preschool Delayed/Atypical. Children identified in this area are those who are ages three and four or those five-year-olds who are ineligible for kindergarten and whose development and/or behavior is so significantly delayed or atypical that special education and related services are required.

(12) Specific Learning Disabled. Specific learning disability is an inclusive term used to denote various processing disorders presumed to be intrinsic to an individual (e.g., acquisition, organization, retrieval, or expression of information, effective problem-solving behaviors). For the purpose of special education services, school-age students classified as learning disabled are those who, after receiving instructional intervention in the regular education setting, have a substantial discrepancy between ability and achievement. The disability is manifested by substantial difficulties in the acquisition and use of skills in listening comprehension, oral expression, written expression, reading, and/or mathematics. A learning disability may occur concomitantly with, but is not the primary result of other disabilities and/or environmental, cultural, and/or economic influences.

NOTE: Not applicable for preschool children.

(13) Speech-Language Impaired. A pupil who has a speech-language impairment has a disorder in articulation, language, voice, and/or fluency. A speech-language impairment may range in severity from mild to severe. It may be developmental or acquired, and pupils may demonstrate one or any combination of the four parameters listed above. A speech-language impairment may result in a primary disability or it may be secondary to other disabilities.

A communication difference/dialect is a variation of a symbol system used by a group of individuals which reflects and is determined by shared regional, social or cultural/ethnic factors and should not be considered a disorder of speech or language.

The components of speech-language impairment include:

(a) articulation. An articulation disorder is an abnormal, nondevelopmental production of phonemes (speech sounds). Types of misarticulations include omissions, substitutions, and distortions;

(b) language. A language disorder is the impairment of comprehension and/or production of an oral communication system. The disorder may involve the form of language (phonologic, morphologic, and syntactic systems), the content of language (semantic system), the function of language (pragmatic system), and/or any combination of the above:

(i) form of language
Phonology is the sound system of a language and the linguistic rules that govern it; Morphology is the rule system that governs the structure of words and the elements of meaning used in their construction; Syntax is the linguistic rule governing the order and combination of words to form sentences, and the relationships among the elements within a sentence;

(ii) content of language
Semantics refers to the content or meaning of words and utterances;

(iii) function of language
Pragmatics refers to the social use of language and its appropriateness in a given situation;

(c) voice. A voice disorder is an abnormal production of pitch (e.g., range, inflection, appropriateness), intensity (loudness), resonation (e.g., excessive nasality), and quality (e.g., breathiness, hoarseness, and harshness);

(d) fluency. A fluency disorder is a disruption in the normal, rhythmic flow of speech that interferes with communication. The disorder may include, but not be limited to, frequency of dysfluencies, duration of dysfluencies, struggle and avoidance characteristics, and types of dysfluencies (repetition--phrases, whole words, syllables, and phonemes; prolongations; and blocks).

(14) Traumatic Brain Injury. Traumatic brain injury means an acquired open or closed head injury caused by an external physical force that impairs a student's cognitive, communicative, perceptual, behavioral, social-emotional, and/or physical abilities to the extent that the student requires special education. Congenital, degenerative, or brain injuries induced by birth trauma are not included in this definition.

(15) Visually Impaired

(a) functionally blind school-age children are those who have so little remaining vision that they use Braille as their reading medium. Preschool children who are functionally blind use predominantly tactile or auditory mediums in order to learn. In children for whom formal vision measures are not appropriate, sufficient documentation for low vision will include diagnosed pathology and functional assessment that describes visual deficits significant enough to interfere with learning;

(b) partially seeing school-age children are those who have a loss of vision but are able to use regular or large type as their reading medium. These will generally be children who have a visual acuity between 20/70 and 20/200 in the better eye after correction. Preschool children with low vision are those who have a loss of vision but are able to use the visual medium as their predominant means of learning. These generally will be children who have an actual or estimated visual acuity between 20/70 and 20/200 in the better eye after correction or whose visual impairment impedes the acquisition of developmental milestones;

(c) children who are legally blind are those who have a visual acuity of 20/200 or less in the better eye after correction or a peripheral field so contracted that the widest diameter subtends an arc no greater than 20 degrees.

B. Adapted Physical Education. A diversified program of activities specially designed for an individual who meets eligibility criteria for special education and/or related services and is not able to participate safely and/or successfully in the regular physical education program

(1) Physical education is the development of:
  (a) skills leading to physical and motor fitness;
  (b) fundamental motor skills and patterns; and
  (c) skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports.)

(2) Physical education includes special physical education, adapted physical education, movement education, and motor development.

(3) Physical education services, specially designed if necessary, must be made available to every child with a disability receiving a free appropriate public education.

(4) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:
  (a) the child is enrolled full time in a separate facility; or
  (b) the child's adapted physical education program, as described in the IEP, requires an alternative service delivery model.

(5) If adapted physical education is required in a child's IEP, the LEA responsible for the education of that child shall provide the services directly, or make arrangements for those services to be provided through other public or private programs.

(6) Adapted physical education services must be provided, to the maximum extent appropriate, in regular class environments with children who are not disabled. Placement for adapted physical education services is to be made on the basis of the individual student's educational needs as required in the IEP.

(7) The LEA responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.

C. Assistive Technology.

(1) Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

D. Evaluation. A full and individualized evaluation of a child's needs must be conducted before any action is taken with respect to the initial placement of a child with special needs in a special education program. Eligibility of children must be determined by using multiple sources of data and must not be dependent upon single test scores. Evaluation procedures may include, but are not limited to, observations, interviews, behavior checklists, structured interactions, play assessment, adaptive and developmental scales, criterion-referenced and norm referenced instruments, clinical judgement, and tests of basic concepts; or other techniques and procedures as deemed appropriate by the professional(s) conducting the evaluations. Evaluations and screenings for determining eligibility for special educational services are defined as follows:

(1) Adaptive Behavior Evaluation. The adaptive behavior evaluation refers primarily to the effectiveness with which the individual generally meets the standards of personal independence and social responsibility expected of his/her age and cultural group. It has two major facets:

(a) the extent to which the individual is able to function independently; and

(b) the extent to which he/she satisfactorily meets the culturally-imposed demands of personal and social responsibility. Evaluations of adaptive behavior look at the total environment of the child. Thus, effort is made to obtain such information from the parents or other appropriate persons in the child's home and community. An adaptive behavior evaluation may be part of the psychological evaluation, and for preschool children, it also may be included as part of the educational evaluation. It may be conducted by professional personnel who are trained in the assessment of adaptive behavior and in the interpretation of this information.

(2) Audiological Evaluation. An audiological evaluation is an examination by a licensed audiologist to determine auditory acuity, auditory perception, and amplification needs for the purpose of planning education services. Whenever possible, the evaluation shall include air conduction testing, bone conduction testing, acoustic immittance measures (e.g. tympanometry), speech reception, discrimination and/or perception testing with amplification and without amplification. When behavioral audiometric testing is not feasible or is unreliable, auditory brain stem responses and/or otacoustic emissions are to be used.

(3) Braille Skills Inventory. The inventory is an appraisal of the child's most efficient reading medium (Braille and/or print). Items to be considered in the appraisal may include, but are not limited to, noting the working distance from the page, reading rates and accuracy, visual fatigue, and tactile discrimination.

(4) Educational Evaluation. An educational evaluation is an evaluation of a child's educational functioning in relation to his/her current educational program. The results of this evaluation are expressed in terms of both the child's academic and/or developmental strengths and needs. This evaluation should be comprehensive, using a full range of available instruments and observations, including diagnostic tests and other appropriate formal and informal measures. For preschool children, an educational

evaluation must be conducted by a licensed teacher or other appropriate professional and should measure the child's progress in learning and skill acquisition. If educational strengths and needs have been addressed and reported as part of other required evaluation (e.g. psychological evaluation), then no further educational evaluation may be needed. For a child whose disability is one of speech-language impairment only, a detailed educational evaluation may not be necessary. For school-age children, speech-language specialists should have information as to the student's grade placement and areas of academic strengths and needs and should consider such information. For preschool children, speech-language specialists should consider information related to the child's developmental status in the following areas: physical, cognitive, communication, social/emotional, and adaptive development.

(5) Health Screening. Health screening may include, but is not necessarily limited to as many of the following areas as may be appropriate: vision screening, hearing screening, dental screening, review of health history, review of developmental mile-stones, assessment of physical growth and assessment of nutritional status. Health screening may be performed by a school nurse or other appropriately trained persons.

(6) Health/Medical Evaluation. Evaluations in this area must be conducted by appropriately trained and/or licensed health professionals and may include one or more of the following areas, as indicated through screening procedures:

(a) audiological,
(b) ophthalmological/optometric,
(c) orthopedic,
(d) medical (significant health conditions affecting development), and/or
(e) neurological.

(7) Motor Screening. Motor screening includes reviewing written and verbal information, observing the child in a variety of settings and/or administering screening instruments to determine adequacy of motoric functioning and need for further evaluation. Persons who may screen motor skills are psychologists, specially trained teachers of children with special needs including adapt ed physical education teachers, occupational therapists, physical therapists, and other health professionals.

(8) Motor Evaluation. A motor evaluation obtains and provides information to assess a student's current level of motoric functioning and any problems encountered in performing motor tasks. This information may be collected through review of educational and medical records; interviews with teachers, parents, and others, including the student; clinical observations; and the administration of formal testing instruments, procedures, and techniques. A motor evaluation should include, but is not limited to, as many of the areas listed below as may be appropriate:

(a) musculo-skeletal status;
(b) neuromotor/neurodevelopmental status;
(c) gross-motor development and coordination;
(d) fine-motor development and coordination;
(e) sensory-motor skills;
(f) visual-motor skills;
(g) bilateral coordination;

(h) postural control and balance skills;
(i) praxis/motor planning skills;
(j) oral-motor skills
(k) gait and functional mobility skills.

Motor evaluations are performed by physical therapists or occupational therapists or, when appropriate, adapted physical education teachers. Oral-motor skills may be assessed by speech/language specialists when appropriate.

(9) Observation. Observations of the preschool child should be made in his/her natural environment; that is, the setting within the community where preschool children without disabilities usually are found (home, day care, Head Start, etc.) and must document areas of strength and areas which are the focus of concern. Observational data on the preschool child's interactions with persons and objects, and his/her compliance with structure, taking into consideration age-appropriate expectations, may be helpful. Observations may be conducted by a teacher, social worker, program coordinator, or other involved professionals.

Observations of school-age students usually occur in the regular classroom setting and must document areas of strength as well as areas of need.

(10) Ophthalmological or Optometric Evaluation. An ophthalmological or optometric evaluation is an evaluation by an ophthalmologist or optometrist to determine visual acuity and function and whether or not magnification is needed.

(11) Otological Evaluation. An otological evaluation is an evaluation by a licensed otologist to determine the presence or absence of ear pathology and the need for medical treatment.

(12) Psychological Evaluation. A psychological evaluation includes those procedures utilized by a psychologist. The evaluation should include an assessment of cognitive functioning and may also include, but not be limited to, assessments of educational performance, social/emotional/behavioral functioning, and adaptive behavior. Procedures used by the psychologist may include formal and informal assessment measures, observations, interviews, and other techniques as deemed appropriate by the psychologist. The assessment of cognition may include intelligence, memory, reasoning, problem solving, attending, and processing. Where these instruments are clearly inappropriate as standardized, the psychologist should use his/ her professional judgement about the selection of instruments for assessing the intellectual functioning of children. Psychological evaluations shall be performed by qualified examiners. School psychologists employed by the public schools must be licensed by the State Department of Public Instruction. Psychologists contracting with schools on a private basis must be licensed as psychological associates or practicing psychologists by the North Carolina Psychology Board. When contracting with state agencies for psychological services, the local educational agency's contract must be with the agency and not with the individual psychologist.

(13) Social History. A social history documents normal and abnormal developmental and/or medical events and includes a review of information gathered during the screening process. For preschool children, a social history must include an assessment of family

composition, support systems, stressors, and environment as they correlate with the child's need or special services. The history also must include the family's or caregiver's perspective about the child and the need for special services. The history may be obtained by a licensed social worker, special educator, psychologist, counselor, nurse, teacher or other appropriate persons.

(14) Speech-Language Screening. Speech language screening quickly and reliably provides information in the areas of articulation, expressive and receptive language, voice and fluency for determining which students have communication within normal limits and which ones should be referred for further evaluation.

(15) Speech-Language Evaluation. A speech-language evaluation includes the following aspects of speech-language: articulation, fluency, voice, and language (form, content, and function). A speech-language evaluation is conducted by a speech-language specialist licensed by the State Department of Public Instruction and/or licensed by the State of North Carolina.

(16) Vocational Evaluation. Vocational evaluation is a process involving an interdisciplinary team approach in assessing an individual's vocational potential and training and work placement needs.

D. Free Appropriate Public Education. As used in this part, the term "free appropriate public education" means special education and related services which:

(1) are provided at public expense, under public supervision and direction, and without charge;

(2) meet the standards of the state education agency; and

(3) are provided in conformity with an individualized education program for students with disabilities, group education program for the academically gifted or written educational program for the pregnant.

E. Individualized Education Program. As used in this Section, the term "individualized education program" means a written statement for a child with special needs that is developed and implemented pursuant to .1512 of these Procedures.

F. Least Restrictive Environment. Least restrictive environment means that, to the maximum extent possible, children with special needs shall be educated with children who are not exceptional. After examining all alternatives for placement within an educational system, children with special needs shall be placed where they can obtain the appropriate educational services which meet their individual educational/developmental needs as close to and as nearly like a regular classroom setting as possible. For preschool children with disabilities, this shall be interpreted to mean the most natural environment possible. Each local educational agency providing special education and related services must specify in the individualized education program for children with disabilities, group education program for the academically gifted or written educational program for the pregnant, the extent to which the child with special needs will participate in regular education.

G. Local Educational Agencies. For purposes of this Section, the term "local educational agency" refers to the following:

(1) All city and county school administrative units as separate local educational agencies;

(2) Department of Human Resources as one local educational agency. All schools, hospitals and agencies providing educational programs and/or services will be considered schools or programs under this local educational agency; and

(3) Department of Correction as one local educational agency. All prisons providing educational programs or services will be considered programs under this local educational agency.

H. Parent. The term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with this Section. The term does not include the state if the child is a ward of the state.

I. Related Services. Related services "means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology; psychological services; physical and occupational therapy; recreation including therapeutic recreation; social work services; medical and counseling services, including rehabilitation counseling,) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. Medical services shall be for diagnostic and evaluation purposes only.

(1) "Audiology" includes:
   (a) identification of children with hearing loss and middle ear dysfunction;
   (b) determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
   (c) provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing aid orientation, and speech conservation;
   (d) creation and administration of programs for prevention of hearing loss;
   (e) counseling and guidance of pupils, parents, and teachers regarding hearing loss; and
   (f) determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by licensed social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician or other appropriately trained and/or supervised health provider to determine a child's medically

related disabling condition which results in the child's need for special education and related services.

(5) "Occupational therapy" is a service provided by a licensed occupational therapist to address the functional needs of an individual as they relate to sensory, motor, postural, and emotional development, adaptive behavior and play, and the performance of self-help skills. These services are designed to develop, improve, restore, or maintain the individual's functional ability to perform tasks in educational settings. In an educational setting, occupational therapy services are provided to enable an identified student to benefit from special education in the least restrictive environment. Occupational therapy services may include:

(a) identification, screening, evaluation, intervention and consultation;
(b) adaptation of environments, both human and physical, and selection, design, and fabrication of assistive and orthotic devices and other assistive technology to facilitate development and promote the acquisition of functional skills so that the child can perform tasks in the least restrictive environment;
(c) prevention or minimization of the impact of initial or further impairment, delay in development, or loss of functional ability; and
(d) provision of inservice education and information to families, school personnel, and community and state agencies to assist with problem solving, program planning, and priority setting for children with special needs.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development. For preschool children with disabilities, parent counseling and training includes family services which would assist parents in securing information, resources, and support that affect the child's development.

(7) "Physical therapy" is a service provided by a licensed physical therapist and is concerned with prevention of physical disabilities and with providing rehabilitation services to individuals with disabilities resulting from prenatal causes, birth trauma, illness, or injury. These services are designed to develop or restore neuromuscular and/or sensorimotor functions, control postural deviations to minimize disabilities, and to develop and to maintain maximal performance levels within the individual's physical capabilities. In an educational setting, physical therapy services are provided to enable an identified student to benefit from special education in the least restrictive environment. Physical therapy services may include:

(a) development and maintenance of an individual student's physical potential for independence and safety in educationally related activities;
(b) modification and adaptation of the student's physical environment so that the student may benefit from special education;
(c) provision of inservice training for school personnel;
(d) communication with state and community agencies;
(e) education for parents or guardians; and
(f) involvement in total program planning for exceptional children.

(8) "Psychological services" include:

(a) administering psychological, educational tests, and other procedures such as observations and interviews, in order to determine a student's strengths and educational, social, behavioral and/or developmental needs; for preschool children psychological assessment may include administering psychological tests and/or criterion-referenced, curriculum-based and other educational tests, as well as conducting other assessment procedures such as observations, interviews, structured interactions, and play assessments as deemed appropriate by the psychologist;

(b) interpreting assessment results;

(c) obtaining, integrating, and interpreting information about a child's behavior and environmental conditions related to learning and development;

(d) consulting with parents, teachers, and other school personnel in planning programs and services to meet the identified needs of children, including but not limited to placement, effective learning/ teaching strategies, and personal and social skills;

(e) planning and managing a program of psychological services including psychological counseling for children and parents;

(f) referring children and families to community agencies and services when appropriate;

(g) screening and early identification of children with special needs; and

(h) developing strategies for the prevention of learning and behavior problems.

(9) "Recreation" includes:

(a) assessment of leisure functions;

(b) therapeutic recreation services;

(c) recreation programs in schools and community agencies; and

(d) leisure education.

(10) "School health services" are services provided by a qualified school nurse or other qualified person.

(11) "Social work services in schools" include:

(a) preparing a social or developmental history for a child with a disability;

(b) group and individual counseling with the child and family;

(c) working with those problems in a child's living situation (home, school and community) that affect the child's adjustment in school; and

(d) mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

(12) "Speech pathology" includes:

(a) identification of children with speech or language disorders;

(b) diagnosis and appraisal of specific speech or language disorders;

(c) referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(d) provisions of speech-language services for the habilitation or prevention

of communicative disorders; and

(e) counseling and guidance of parents, children, and teachers regarding speech-language disorders.

(13) "Transportation" includes:

(a) travel to and from school and between schools;

(b) travel in and around school buildings; and

(c) specialized equipment (such as special or adaptive buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

J. Screening. Screening consists of first-step assessment procedures aimed at selecting students who may have special needs. Two separate components of screening may be identified:

(1) Mass screening or sweep screening is the selection of children who may need services such as special education, related services, special health services, or sensory aids in order to achieve full learning potential. These individuals will need follow-up to identify specific academic and behavioral or developmental needs by additional evaluation processes. Mass screening or sweep screening may be accomplished through the administration of such programs as:

(a) school-wide achievement testing;

(b) school-wide health and sensory testing;

(c) early childhood and kindergarten testing; and

(d) class-wide surveys and observations.

For preschool children, screening also may be carried out by the following agencies:

(a) public health departments;

(b) developmental evaluation centers;

(c) mental health centers; and

(d) developmental programs (e.g., Head Start).

(2) Individual screening is the identification of children whose specific academic, behavioral, or developmental problem areas may need further in-depth evaluation. Individual screening should more accurately select those students who need further consideration for special school services, which may include special education and related services.

K. Special Education. Special education is specially designed instruction, at no cost to the parent, to meet the unique needs of the exceptional child, including classroom instruction, instruction in physical education, home instruction, instruction in hospitals and institutions, and instruction in other settings. The term includes speech language pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parent, to meet the unique needs of an exceptional child, and is considered "special education" rather than a "related service" under State standards. The term also includes vocational education if it consists of specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability.

L. Transition. Transition is a coordinated set of activities for a student, designed within an outcome-oriented process, which promote movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services for students with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education.

M. Transition services for preschool children with a disability include those activities that allow a child with a disability to move from the infant toddler program to the preschool program and/or from the preschool program to kindergarten or first grade without an interruption in services. These activities may include assisting the child and the family through the transition process, coordinating administrative functions to ensure appropriate placement, and working with the interagency council. The person responsible for conducting these activities may be a teacher, a program coordinator, or a related service provider.

History Note: Statutory Authority G. S. 115C-108 through 110; 115C-113;
Eff. October 1, 1978; G. S. 115C-146.1 through 146.4;
Eff. July 10, 1991;
Amended Eff. July 11, 1991; December 7, 1989; November 1, 1984;
September 28, 1981; September 30, 1980; July 15, 1979.

.1502 IDENTIFICATION, SCREENING, EVALUATION AND PLACEMENT

A. Local educational agencies including local school administrative units and Department of Human Resources and Department of Correction agencies providing special education to children with special needs are responsible for ensuring that all children with special needs within their jurisdiction are identified, located and evaluated, including children in private agencies within their jurisdiction ages birth through twenty-one.

B. Local educational agencies and private schools shall implement procedures for screening, evaluation, identification, and placement of children with special needs. These procedures shall be in keeping with Chapter 1293 of 1973 Session Laws as amended by Chapter 151 and 563 of 1975 Session Laws and Subchapter 13, Article 9, Chapter 115-C, Chapter 423, 1981 Session Laws and Education of All Handicapped Children Act, P.L. 94-142 as amended by Individuals with Disabilities Education Act, P.L. 101-476. The local procedures shall be adopted by the governing board of each local education agency and private school and shall include the procedures described in this rule.

C. Variations from these procedures may occur when sufficient evidence exists to indicate that children can be properly identified and placed within the intent of the procedures. A written plan detailing the variations with reasons listed shall be submitted to the Director, Exceptional Children Division , for approval prior to their implementation.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113;
Eff. July 15, 1979.
Amended Eff. July 11, 1991.

.1503 OBSERVATION

If a teacher, a parent, or another involved professional recognizes a need for assistance with a child, the child should be observed in his/her class or present setting by at least one of the following: the principal or program director; the Director, Exceptional Children Programs; a teacher of exceptional children; or appropriate support services personnel. This step may be eliminated if it is determined that sufficient documentation exists that the child is having definite problems with his/her educational program(s) or that the preschool child is exhibiting significant developmental delays that will impair learning in a regular educational setting. If a child is observed, a written description of his/her behavior and academic or developmental skills should be completed.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113;
Eff. July 15, 1979.
Amended Eff. July 11, 1991.

.1504 INITIAL CONFERENCE PRIOR TO SCHOOL-BASED OR PRESCHOOL TRANSITION/PLACEMENT COMMITTEE REFERRAL

The teacher, the Director, Exceptional Children Programs, or his/her designee, the parent and the principal or administrator of the child's current setting, may confer to determine whether the regular program can be adapted to meet the needs of a child, whether transfer to another teacher is advisable, or whether special education service(s) or placement appears to be indicated. If it is felt that a special program or service may be needed, the parents shall be notified, and a referral shall be made in writing to the school-based or preschool transition/placement committee. The observation report and initial conference report should be presented to the school-based or preschool transition/ placement committee.

History Note: Statutory Authority G. S. 115C-106(b): 115-113;
Eff. July 15, 1979.
Amended Eff. July 11, 1991.

.1505 REFERRAL

When a teacher or other involved person recognizes that a child is exhibiting developmental problems or that a child's educational needs are not being met, he/she will provide in writing the reason for referral, addressing the specific presenting problems and the child's current strengths and weaknesses or needs. This referral will be given to the principal of the school, the child's teacher, or the superintendent or other appointed official of the local educational agency. For preschool children with disabilities, the referral also may be given to the person designated to be in charge of services for preschool children with disabilities. All newly identified children with disabilities ages 3 through 20 who have special needs, and all academically gifted children, ages 5 through 20, who are diagnosed or evaluated by personnel under the Department of Human Resources and Developmental Evaluation Clinics of the Department of Environment, Health and Natural Resources shall be referred to the city or county school administrative unit of their residence for local educational agency involvement in placement.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113;
Eff. July 15, 1979.

.1506 SCHOOL-BASED COMMITTEE FOR STUDENTS AGES FIVE AND OLDER

NOTE: For preschool children the functions of the School-Based Committee (Section .1506) and the Administrative Placement Committee (Section .1507) have been combined and are described in the section entitled Preschool Transition/Placement Committee immediately following Section .1507.

A. Overall Function. The school-based committee shall provide a team framework for evaluating data and recommending the most appropriate placement for children referred for special education services. It shall cause to be provided an evaluation by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability. The school-based committee is responsible for receiving referrals; involving parents in the planning process; obtaining parental permission for assessment; initiating screening and evaluation procedures; evaluating information; and seeing that an individualized education program for children with disabilities, group education program for the academically gifted, or written educational program for the pregnant is developed and is reviewed annually.

B. Composition. Members of the school-based committee shall be selected from the following and must include one member who is knowledgeable about the child:

(1) principal (or designee) as chairperson;

(2) teacher referring the child;

(3) director, programs for exceptional children (or designee);.

(4) teacher of exceptional children;

(5) psychologist;

(6) social worker;

(7) guidance counselor;

(8) speech-language specialist;

(9) physician or school nurse;

(10) physical therapist;

(11) occupational therapist;

(12) physical education teacher;

(13) recreation specialist;

(14) referring agency personnel;

(15) parent(s);

(16) vocational education teacher and/or a vocational rehabilitation counselor for a student who is fourteen years of age or older; and

(17) person(s) knowledgeable about technology.

At least one member of the school-based committee should be of the same race and sex as the child being referred.

C. Responsibilities of School-Based Committees. The school-based committee shall:

(1) receive referral information for a student suspected of needing special education services;

(2) ensure that after an initial referral is made, the student's parent or guardian is sent a written prior notice that meets the requirements of Section .1517 describing the evaluation procedure which will be followed to diagnose the student's educational needs and requesting written consent for the evaluation. All communication with the student's parent or guardian shall be in the native language or dominant mode of communication of the parent or guardian;

(3) ensure that a student receives a diagnosis and evaluation appropriate to meet his/her educational needs after receipt of written consent from parent or guardian;

(4) ensure that information from all the appropriate evaluations and sources is documented and considered, review and interpret the results of the diagnosis and evaluation data in conjunction with appropriate evaluation personnel and determine eligibility. If the evaluators cannot be present at the school-based committee meeting, their written reports are to be presented;

(5) invite parents to the individualized education program committee meeting, group education program committee meeting or written education program committee early enough to ensure them an opportunity to participate;

(6) convene individualized education program committee, group education program committee or written education program committee;

(7) ensure that an individualized education program is developed within 30 calendar days of the team decision that a student is a child with special needs;

(8) ensure that written prior notice is given to parents which meets the requirements of Section .1517 prior to the placement or denial of placement;

(9) ensure that written consent for initial placement in a program for special needs children is obtained from the parent or guardian and that the parents have been involved in the development of the individualized education program for a child with a disability, group education program for the academically gifted, or written education program for the pregnant;

(10) forward to the administrative placement committee the completed individualized

education program for a child with a disability, group education program for the academically gifted, or written education program for the pregnant, and the placement which would best meet the educational needs of the student and the information which was considered in formulating the placement recommendation;

(11) ensure that placement occurs as soon as possible;

(12) ensure that the teacher(s) of the child receives the individualized education program for a child with a disability, written education program for the pregnant and pertinent information necessary for working with the student;

(13) ensure that twelve months after placement and at least annually thereafter, the individualized education program committee shall conduct an annual review of the progress of each child with a disability placed in a special education program on the basis of previously expected benefits. The teachers responsible for the development of the group education program shall conduct an annual review of the progress of each academically gifted student. The committee must make decisions regarding individualized education programs for children with disabilities, group education programs for the academically gifted and continuation in the program.

D. Change In Placement/Exit Criteria. When a school-based committee has evaluated and has documented evidence to show that a pupil no longer needs the special program or service in which he/she is enrolled or that another placement would be more appropriate in the least restrictive environment, the committee shall make a recommendation to the administrative placement committee. After the administrative placement committee has made a decision, the parent(s) or guardian(s) is provided written prior notice pursuant to the procedures set forth in .1517 of this Section. If the parent(s) or guardian(s) objects to the recommended placement, he/she may follow the appeal procedures as outlined in .1517 of this Section.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113;
Eff. October 1, 1978;
Amended Eff. July 11, 1991; June 21, 1989;
December 7, 1989; November 1, 1984;
September 28, 1981, September 30, 1980;
July 15, 1979.

.1507 ADMINISTRATIVE PLACEMENT COMMITTEE FOR SCHOOL-AGE STUDENTS

NOTE: *For preschool children the functions of the School-Based Committee (Section .1506) and the Administrative Placement Committee (Section .1507) have been combined and are described in the section entitled Preschool Transition/Placement Committee immediately following Section .1507.*

A. Function. The administrative placement committee will make all final decisions regarding classification of students as special needs and placement of students in programs for exceptional children.

B. Responsibilities. The administrative placement committee is responsible for:

(1) receiving and reviewing information collected and considered by the school-based committee in formulating the recommendation regarding classification of a student as

special needs and placement of a student in a special program;

(2) reviewing the recommendation of the school-based committee regarding classification of a student as special needs and placement of a student in a special program;

(3) ensuring compliance with due process procedures concerning the identification and placement of a student in a program for exceptional children. Due process procedures must be provided in writing to the parents.

(4) reviewing referrals of students from other agencies or of students who are not being presently served in the local educational agency and making the final decision concerning classification of a student as special needs and placement. For a child not presently served in the local educational agency, the committee might wish to refer the child to a school-based committee for the development of an individualized education program for children with disabilities, group education program for the academically gifted or written education program for the pregnant. If a child is screened or evaluated by the staff of the Department of Human Resources, this information should be presented to the administrative unit where the student resides for the determination of appropriate classification as a student with special needs and placement.

(5) conferring with appropriate Department of Human Resources staff for the development of an individualized education program for children with disabilities, group education program for the academically gifted, or written education program for the pregnant and determination of appropriate placement if it is determined by the administrative placement committee in a city or county school administrative unit that a child should receive a free appropriate public education in a program operated by the Department of Human Resources. If a child is released from a program operated by the Department of Correction or the Department of Human Resources, staff from the program shall confer with the administrative placement committee in the school administrative unit for development of an individualized education program for children with disabilities, group education program for the academically gifted, or written education program for the pregnant and determination of appropriate placement. The individualized education program for children with disabilities, group education program for the academically gifted, or written education program for the pregnant will follow the child from one placement to another. The individualized education program for children with disabilities, group education program for the academically gifted or written education program for the pregnant may be challenged under due process provisions;

(6) making financial arrangements with other local educational agencies, other public agencies or private schools;

(7) if the placement decision is for placement outside the local educational agency, the committee must see that an appropriate individualized education program for children with disabilities, group education program for the academically gifted or written educational program for the pregnant is developed in conjunction with the school or program where the child is being placed;

(8) if the administrative placement committee determines that the individualized education program for children with disabilities, group education program for the academically gifted or written education program for the pregnant is not adequate and does not define

an appropriate education for the child, then the administrative placement committee must reconvene an IEP committee which includes all the required members. The override process shall not be used to delay the implementation of the individualized education program which shall commence as soon as possible. The parent must be informed that he or she has all rights to participate in changing the individualized education program for children with disabilities, group education program for the academically gifted or written education program for the pregnant and the right to a hearing. After the change, a new consent form must be signed by the parent, if it is for initial placement;

(9) ensuring that an eligible child with special needs is placed in the appropriate special program within 90 calendar days of receipt of a referral, unless parent refuses to give consent for evaluation or placement.

C. Composition. One member of the administrative placement committee must be someone from the central office of the local educational agency who has been designated by the superintendent as eligible to commit financial or other resources. Other members of the administrative placement committee should be selected from the following and must include at least one member who is knowledgeable about the child:

(1) Director, Exceptional Children Programs;

(2) Chairperson of the appropriate school-based committee;

(3) Superintendent, or designee;

(4) General supervisor;

(5) School psychologist;

(6) Other appropriate personnel;

(7) If a child is referred by another agency, an appropriate representative from that agency shall provide input for appropriate placement.

The administrative placement committee should have at least one member of the same race and sex as the student being considered for special education placement.

D. Committee Alternative. The school-based committee, individualized education program committee, group education program committee, written education program committee, multidisciplinary team, and administrative placement committee may be combined into one committee or a combination of committees to meet the needs of the particular local educational agency. To combine committees, local educational agencies shall describe in writing the composition, purpose, and responsibilities of the combined committee(s). The description of the committee alternative shall be kept on file and shall be available for inspection at the request of any individual, and during any monitoring/compliance visit. For a combined Administrative Placement Committee and School-Based Committee, the Administrative Placement Committee Representative shall be the Director, Excèptional Children Programs or his/her designee and shall be someone who can commit financial or other resources. Any combined committee shall have membership that is knowledgeable about the student. In combining the committees, local educational agencies must meet the requirements in Section .1512, 1506, and .1507. If the category is specific learning disabilities, the unit must also meet the requirements of Section .1509 H (4).

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; Eff. October 1, 1978;
Amended Eff. July 11, 1991; December 7, 1989; September 28, 1981;
September 30, 1980; July 15, 1979.

.1506 and .1507 PRESCHOOL TRANSITION/PLACEMENT COMMITTEE

A. Overall Function. The preschool transition/placement committee is a combination of the Administrative Placement Committee, School-Based Committee, and the Individualized Education Program Committee. It provides an interagency framework for evaluating data, for making decisions regarding eligibility, and deciding the most appropriate placement for children referred for special education services. It ensures a multi-disciplinary evaluation by a team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability. The preschool transition/placement committee may divide into a subcommittee to facilitate the transition/placement process. The preschool transition/placement committee is responsible for receiving referrals; involving parents in the planning and decision-making process; obtaining parental permission for assessment; initiating or reviewing screening and evaluation procedures; evaluating information; and seeing that an individualized education program for preschool children with disabilities is developed and reviewed at least annually. The preschool transition/placement committee functions and committee composition for developing the individualized education program and determining placement shall be in accordance with Section .1512. The local education agency has legal and fiscal responsibility for ensuring the provision of special education and related services to three- and four-year-old children with disabilities and those five-year -old children with disabilities who are not eligible for kindergarten; therefore, decisions concerning the placement process ultimately remain with the local education agency.

B. Composition. Members of the preschool transition/placement committee include the following:

*(1) parent(s), guardian, or surrogate;

*(2) referring agency personnel or teacher or representative from current service provider if the child is enrolled in an early intervention or preschool program;

*(3) director of programs for exceptional children or a designee from the local education agency other than the child's teacher who shall be qualified to provide, or supervise the provision of, specifically designed instruction to meet the unique needs of the child, and who is able to commit financial resources;

*(4) teacher qualified to provide special education;

*(5) a person knowledgeable about evaluation results who may be a psychologist or a developmental evaluation center representative;

These members shall be involved when the individualized education program is being developed and placement decisions are being made. At least one member of the preschool transition/placement committee should be of the same race and sex as the child being referred.

Other members may be selected from the following:

(6) principal or designee:

(7) social worker;

(8) guidance counselor;

(9) speech-language specialist;

(10) physician or school nurse;

(11) physical therapist;

(12) occupational therapist;

(13) area agency representatives or involved professionals, as appropriate;

(14) potential service providers;

(15) other individuals at the discretion of the agency or parent;

C. Responsibilities of Preschool Transition/Placement Committee.
The preschool transition/placement committee shall:

(1) establish procedures consistent with the infant-toddler program for children transitioning to the preschool program to ensure that:
   (a) upon notification by the infant/toddler service coordinator, available information on children who may be referred for preschool services is reviewed by the LEA;
   (b) there is participation by the LEA representative at the transition planning meeting convened by the infant/toddler service coordinator; and
   (c) the LEA assumes responsibility for all eligible children on their third birthday.

(2) receive referral information for children, either served or unserved by the LEA

(3) ensure that all parent rights are followed after an initial referral is made (Section .1517). All communication with the child's parent or guardian shall be in the native language or dominant mode of communication of the parent or guardian, including an interpreter for parents who are deaf;

(4) ensure that children with disabilities receive a diagnosis and evaluation appropriate to meet educational or developmental needs after receipt of written consent from parent and guardian; if a child is screened or evaluated by staff in programs in the Department of Human Resources or the Department of Environment, Health, and Natural Resources, the screening/evaluation results shall be presented to the preschool transition/placement committee of the local education agency where the child resides.

(5) ensure that information from appropriate evaluations and sources is documented, reviewed and interpreted in with appropriate evaluation personnel to determine eligibility, classification, and placement of a child in a special program. If the evaluators cannot be present at the preschool transition/ placement committee meeting, their written reports are to be made available;

(6) ensure compliance with due process procedures in Section .1517 concerning the identification and placement of a child in a program for exceptional children and provide due process procedures in writing to the parent(s) or guardian;

(7) ensure that an individualized education program is developed within 30 calendar days of the eligibility determination. For children transitioning from an infant-toddler program to the preschool program, the individualized family service plan (IFSP) may be used in place of the individualized education program if all of the components required on the individualized education program are present, if all of the required components of the IFSP are present, if the individualized family service plan continues to be appropriate, and if the parents agree to its use.

(8) invite parents to the meeting at which the individualized education program will be developed, provide assistance that will enable them to participate to the fullest extent they desire, and document all attempts to involve parents in the IEP process;

(9) ensure that written notice which meets the requirements of Section .1517 is given to parents prior to the placement or denial of placement and the provision of a free, appropriate public education;

(10) ensure that written consent for initial placement in a program for children with disabilities is obtained from the parent or guardian and that the parents have been involved in the development of the individualized education program for the preschool child with a disability;

(11) ensure that the individualized education program for a child with a disability will follow the child from one setting to another;

(12) ensure that the teacher(s) of children with disabilities receive a copy of the individualized education programs for the child with a disability and pertinent information and technical assistance necessary to implement the individualized education programs;.

(13) ensure that twelve months after placement, and at least annually thereafter, a review of progress is conducted for each child placed in a special education program. The preschool transition/placement committee must make decisions regarding revised individualized education programs for children with disabilities and make recommendations concerning continuation of the programs; and

(14) ensure that eligible children with disabilities are placed in appropriate special programs within 90 calendar days of receipt of referrals, unless the parents refuse to give consent for evaluation and/or placement.

D. Change in Placement/Exit Criteria. When a preschool transition/placement committee has evaluated and has documented evidence to show that a child no longer needs the special program or service in which he/she is enrolled or that another placement would be more developmentally appropriate or less restrictive, the committee shall make a recommendation regarding placement in accordance with Section .1512. After the preschool transition/placement committee has made a decision, the parent(s) or guardian(s) is provided written prior notice pursuant to the procedures set forth in Section .1517. If the parent(s)

or guardian(s) objects to the recommended placement, he/she may follow the appeal procedures as outlined in Section 1517.

History Note: Statutory Authority G. S. 115C-146.1 - 146.4;
Eff. July 11, 1991.

.1508 COMPREHENSIVE SCREENING AND EVALUATION

Screening and evaluation are the responsibility of the school-based committee or preschool transition/placement committee and professionals qualified to administer and determine the results of certain technical tests and procedures which are designed to screen or evaluate a pupil's strengths and weaknesses in specific areas of learning and/or behavior. Such professionals may be available within the city and the county school administrative units or from other appropriate agencies (e.g., mental health centers, public health departments and developmental evaluation clinics).

A. Parental Permission. When initial screening and/or evaluation procedures require the administration of instruments, interviews, or other procedures used selectively with an individual child (not given to everyone in the child's class or setting grade or school), written parental permission must be obtained. The local educational agency shall send a written prior notice to the parent(s) or guardian(s). Refer to Section .1517 for contents of notice to parent(s).

B. Screening. Screening shall be done to determine if the child is eligible for further consideration for special education services. Appropriate screening may eliminate unnecessary referrals for psychologicals and other in-depth assessment. The child's existing school records, including work samples, shall be collected and analyzed. For preschool children, information may be collected from a day care, Head Start, or private program. Other screening information could include physical health information, educational data, developmental history, and informal social behavior data.

C. Evaluations/Screenings. The evaluations and screening of an exceptional child must be multi-faceted and multi-disciplinary in order to provide a comprehensive view of the child from the perspective of the school, home, and community. In addition to ability and achievement or skill acquisition data, information on physical condition, socio-cultural background, and adaptive behavior in the home and school should be gathered, considered and weight should be given to each.

D. Parental Consent. If the parent(s) or guardian(s) consents, the local educational agency shall provide or cause to be provided an appropriate evaluation. If the parent(s) or guardian(s) does not consent, the local educational agency may obtain a due process hearing on the failure of the parent to consent, pursuant to .1517.

E. Validated Instruments. Tests and other evaluation materials must have been validated for the specific purpose for which they were used.

F. Racially and Culturally Unbiased Evaluations. All tests and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with special needs will be selected and administered so as not to be racially or culturally discriminatory. Such materials and procedures will be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so. No single procedure shall be the sole criterion for determining an appropriate education program for a child. Test results should accurately reflect the child's aptitude, achievement level, or whatever other factor the test purports to measure, rather than reflecting the child's impaired sensory,

manual or speaking skills, except when such skills are the factors which the test purports to measure.

G. Assessment Procedures for Preschool Children. Eligibility may be determined by the following: standardized measures, criterion-referenced tests, curriculum-based tests, sensorimotor assessments, observations, interviews, play and interactive assessments, and behavioral checklists.

History Note: Statutory Authority G. S. 115C-113;
Eff. July 15, 1979; June 21, 1989
Amended Eff. July 11, 1991; December 7, 1989;
September 28, 1981; September 30, 1980.

.1509 SPECIAL IDENTIFICATION PROCEDURES

Special identification procedures appropriate to particular types of special needs children include, but are not limited to, the following:

A. Academically Gifted.

(1) Local educational agencies shall develop a local screening procedure in order to establish a pool of students who are possibly qualified for and in need of differentiated instruction. The procedure shall be in writing and must (1) describe the screening process for identifying academically gifted students in grades K through 12 and (2) ensure the inclusion of special populations (minority, culturally different, under-achieving, and students with disabilities in the screening. Initial screening of the pool will determine students for whom formal referrals will be made. Suggested screening procedures may include checklists/behavioral scales of characteristics of the gifted; scores obtained on system-wide standardized tests of intelligence and/or achievement; teacher/ parent/ peer/self nominations; scores obtained on screening instruments; and a a listing of students from high, middle, and low income levels who have demonstrated outstanding ability in the classroom, school or community.

(2) Identification shall be based on an assessment of intelligence or aptitude test scores, standardized achievement test scores and student performance based on grades, demonstrated skills or products. Students earning 98 or more points on IQ/aptitude and achievement percentiles or on IQ/aptitude and achievement percentiles plus scholastic performance are eligible to be considered by the School-Based and Administrative Placement Committees for the academically gifted program. Regardless of the points earned, students who score at or above the 98th percentile on an individual aptitude test shall be classified as academically gifted and are eligible to be considered by the School-Based and Administrative Placement Committees for the academically gifted program.

(3) Criteria.

(a) IQ/Aptitude (50 point maximum): Individual or group tests may be used. A list of recommended tests is available in the Exceptional Children Division. Scores are to be converted to percentiles, and each percentile has a point value.

(b) Achievement (50 point maximum): Composite or total reading/total math subtests may be used. Scores are to be converted to

percentiles and each percentile has a point value. The choice of composite or sub-test scores must parallel the program design for a student.

(c) Scholastic Performance (10 point maximum): For students earning fewer than 98 points on IQ/ aptitude and achievement test scores, scholastic performance shall be considered. A maximum of 10 points shall be added to points earned on IQ/aptitude and achievement based on the accompanying scale for overall academic average, specific subject area grades or documentation of outstanding skills or abilities (e.g., writing portfolios, science projects). Students whose grade average is less than "C" would receive no points.

(d)

	Points			
Percentile	IQ	Achievement	Grades	Points
99	50	50	A	10
98	49	49	A-/B+	9
97	48	48	B	8
96	47	47	B-/C+	7
95	46	46	C	6
94	45	45		
93	44	44		
92	43	43		
91	42	42		
90	41	41		
89	40	40		
88	39	39		
87	38	38		
86	37	37		
85	36	36		
	etc.			

(4) Special Consideration/Further Testing. Standardized assessment instruments do not always adequately control for the lack of environmental or cultural opportunities to learn or for the presence of physical, emotional, or learning disabilities. If the presence of these factors or discrepancies between test scores and classroom performance are judged to have affected the reliability of identification data, further standardized testing shall be completed and the scores used in determining eligibility. Individual aptitude tests shall be given to students who score at the 97th percentile or above on group aptitude tests and who do not obtain enough points on the combination of aptitude, achievement and grades to meet eligibility criteria.

NOTE: Not applicable for preschool children.

B. Behaviorally-Emotionally Handicapped.

(1) Screening Procedures.
For school-age students the following screening information shall be collected and considered in order to make decisions regarding further educational interventions and/or evaluations:

(a) dated and signed documented evidence of at least two interventions attempted in the learning environment in order to make behavioral and

academic achievements possible within the regular educational setting; and the effect of each on the student's behavior. Those interventions should be designed in consultation with other staff members and may include but not be limited to changes in the student's class schedule, curriculum, teachers, instructional techniques, and interventions by student services personnel; and community interventions;

(b) behavioral observation(s) in the learning environment by an appropriate third party which specifically records the incidence and describes the nature of the behavior(s) leading to a referral;

(c) documented and dated evidence that conferences or attempts to conference with the parent and/or guardian concerning the student's specific problems have been conducted;

(d) vision screening;

(e) hearing screening;

(f) records review.

(2) After reviewing screening data, a screening committee determines that a referral for evaluation is necessary if:

(a) specific interventions implemented were not effective;

(b) vision and hearing appear to be within limits;

(c) it is determined that the documented maladaptive behavior appears to be longstanding or of such frequency or intensity so as to interfere with the student's own learning process.

(3) Evaluation Procedures. The evaluation of behaviorally-emotionally handicapped school-age students shall include the following areas:

(a) Behavioral-Emotional Evaluation. The evaluation of behavioral-emotional functioning shall be conducted by a DPI or Board licensed psychologist to document maladaptive behaviors or deficits in coping skills and emotional functioning. A behavioral-emotional evaluation includes information about the unique personal attributes of the student and describes any distinctive patterns of behavior which characterize the student's personal feelings, attitudes, moods, perceptions, thought processes, and significant personality traits. The evaluation shall include:

(i) interviews with the student, appropriate staff, and others;

(ii) checklists or rating scales; and

(iii) screening data and any other observation data.

(b) Educational Evaluation. A comprehensive evaluation conducted by a licensed school psychologist, special educator, or other trained professional shall include an assessment of:

(i) the learning environment including curriculum and task demands;

(ii) academic strengths and weaknesses including written and oral language and information from individualized achievement assessment;

(iii) present levels of academic functioning;

(iv) vocational needs (secondary students).

(c) Psychological Evaluation. A psychological evaluation shall be conducted by a DPI or Board licensed psychologist. This evaluation includes interviews with the student, learning history, and behavioral observations

with special consideration given to evaluation of disorders of thought, memory, judgment, and/or time-place orientation as appropriate. An individual intellectual evaluation shall be given when academic or learning deficits or giftedness is suspected.

(d) Social History. A social history documents normal and abnormal developmental events and includes a review of information developed during the screening process. The history may be obtained by a DPI or Board licensed social worker, special educator, psychologist, counselor or other appropriate person.

(4) Eligibility Criteria. In order to determine eligibility for school-age students for behaviorally-emotionally handicapped programs, the following are required:

(a) Evidence that the student, after receiving supportive regular educational assistance, including specific techniques suggested by the screening committee, still exhibits a behavioral-emotional disorder consistent with the definition;

(b) Evidence that the disability is not the result of social maladjustment; a physical, sensory, or intellectual deficit; or lack of appropriate instruction or management of behavior;

(c) Evidence that the student's own learning process is consistently and significantly disrupted;

(d) Evidence that the patterns of behavior occur in more than one setting over an extended period of time;

(e) Evidence of a marked deviance from the student's peer group.

NOTE: Not applicable for preschool children.

C. Deaf-Blind. Comprehensive evaluations for students with deaf-blindness must include the following:

(1) medical evaluation that includes information on:

(a) precautions

(b) medications

(c) recommendations for physical and/or occupational therapy;

(2) audiological evaluation, followed by an otological evaluation when appropriate;

(3) ophthalmological or optometric evaluation or physician's written verification of a continuing visual disability;

(4) education evaluation which includes, but is not limited to:

(a) self-help skills,

(b) cognitive ability,

(c) social skills,

(d) transition needs;

(5) psychoeducational evaluation that includes, but is not limited to:

(a) personality,

(b) adaptive behavior;

(6) communication evaluation that includes, but is not limited to:

(a) expressive and receptive skills,
(b) augmentative communication skills.

D. Preschool Delayed/Atypical. Children identified in this area are ages three and four or those five-year-olds who are ineligible for kindergarten and whose development and/ or behavior is so significantly delayed/atypical that special education and related services are required. Delayed/atypical patterns of development and/or behavior may affect skill acquisition and later school performance. These patterns may occur concomitantly with, but are not the primary result of, other conditions, or environmental, cultural, or economic influences.

(1) Development. These children may be defined as having delays/atypical patterns of development in one or more of the following five areas:
(a) physical development;
(b) cognitive development;
(c) communication development;
(d) social/emotional development;
(e) adaptive development.

(2) Behavior. These children may be defined as having delays/atypical patterns of behavior.

(3) The criteria for determining delayed/atypical development and/or behavior are outlined in items (a) and (b) below:
(a) Delayed/Atypical Development. Criteria for identifying preschool children who exhibit delayed or atypical development shall include documentation of either:
(i) a 30 percent delay using assessment procedures that yield scores in months, or test performance of 2 standard deviations below the mean on standardized tests, in one area of development; or
(ii) a 25 percent delay using assessment procedures that yield scores in months, or test performance of 1.5 standard deviations below the mean on standardized tests, in two areas of development.
(b) Delayed/Atypical Behavior. Preschool children with delayed or atypical behavior are characterized by behaviors that are so significantly inadequate or inappropriate that they interfere with the child's ability to learn and/or cope with normal environmental or situational demands. There must be evidence that the patterns of behavior occur in more than one setting over an extended period of time. Delayed or atypical patterns of behavior must be documented in one or more of the following areas:
(i) delays or abnormalities in achieving emotional milestones and/or difficulties with issues, such as:
a. attachment and interactions with parents, other adults, peers, materials, and objects;
b. ability to communicate emotional needs;
c. ability to tolerate frustration and control behavior; or
d. ability to inhibit aggression.

(ii) fearfulness, withdrawal, or other distress that does not respond to comforting of caregivers;

(c) indiscriminate sociability, for example, excessive familiarity with relative strangers; or

(d) self-injurious or other aggressive behavior.

Evaluations of children who exhibit delayed/atypical behavior shall be conducted by a DPI or Board licensed psychologist. Identification will be based on informed clinical opinion and appropriate assessment measures.

E.. Hearing Impaired. Children may be identified as needing audiological and otological evaluations through mass hearing screening efforts and/or referral. The audiological evaluation shall include air conduction testing, bone conduction testing, speech reception testing with and without amplification, and impedance testing to determine the type and extent of any hearing loss that may be present. The otological evaluation provides a diagnosis for middle and inner ear disorders.

F. Mentally Handicapped. For school-age students the assessment process will provide information to indicate whether the child needs a program for the mildly retarded (educable mentally handicapped), moderately retarded (trainable mentally handicapped), or severely/profoundly mentally handicapped. The intelligence quotient range for placement in programs for the educable mentally handicapped is 50-69 plus or minus one standard error of measurement. The intelligence quotient range for placement in programs for the trainable mentally handicapped is 30-49 plus or minus one standard error of measurement. Children scoring in over-lapping areas between the educable mentally handicapped, trainable mentally handicapped and severely-profoundly handicapped ranges shall be provided services in the least restrictive appropriate environment.

NOTE: Not applicable for preschool children.

G. Multihandicapped and Severely/Profoundly Mentally Handicapped

Multihandicapped and severely/profoundly mentally handicapped children have a wide variety of disabling conditions and their associated characteristics require diverse and unique evaluation procedures. Comprehensive evaluation data must include:

(1) medical evaluation with information on precautions, medications and recommendations for physical and occupational therapy;

(2) education evaluations that address self-help, cognitive, social and, where appropriate, prevocational skills;

(3) psychological evaluation that includes personality, social and adaptive behavior;

(4) motor evaluation giving information on the neurological and physiological dysfunctions; and

(5) communication evaluation with information on expressive and receptive speech and language skills, with particular attention given to the need for augmentative communication systems.

NOTE: Not applicable for preschool children.

H. Pregnant Students. Diagnosis of pregnant students shall be by a physician or by the Health Department. The identification of the special educational needs of pregnant students shall be accomplished by multiple means. These methods shall include, but are not limited to, written recommendations from a

licensed practicing physician, school counselor, social worker, teacher, nurse practitioner, parent, the student, or significant others. Such recommendations shall be reviewed by the school-based and administrative placement committees which shall make the final decision on educational placement and programming.

I. Specific Learning Disabled.

(1) Eligibility Criteria. The following criteria shall be met in identifying school-age students as learning disabled and in need of special education:

(a) after at least two intervention strategies have been implemented in regular education or other programs, the student still exhibits learning difficulties;

(b) achievement measured in age standard score units is 15 or more points below intellectual functioning;

(c) the disability is not primarily the result of sensory deficits, motor deficits, mental disability, behavioral/ emotional disability or environmental, cultural/linguistic, and/or economic influences. If a student's learning problems can be attributed to any of these exclusionary factors, then the primary disability is not a learning disability;

(d) the student exhibits characteristics of learning disabilities consistent with the definition.

(2) Screening Procedures. The following screening information shall be collected and considered for school-age students in order to make decisions regarding further educational interventions and/or evaluations:

(a) dated documentation of conferences or attempts to conference with parents or guardians concerning the student's specific problem;

(b) dated and signed documented evidence of at least two interventions attempted within the regular education setting and the effect of each. Those interventions should be designed in consultation with other staff members and may include, but not be limited to, changes in the student's class schedule, curriculum, teachers, instructional techniques, and interventions by student services personnel;

(c) behavioral observation(s) by an appropriate third party observer and/or other evidence, such as work samples, which describe and document the student's learning problem within at least one of the areas of learning disabilities;

(d) information concerning the student's:

(i) educational history;

(ii) medical history;

(iii) school attendance record;

(iv) performance in relation to peers (e.g., group or individual screening intelligence and achievement tests, criterion referenced tests and work samples);

(v) social functioning; and

(vi) environmental and cultural status.

(e) vision screening for near and far vision acuity;

(f) hear[illegible]creening.

(3) Evaluation Procedures for School-Age Students. The evaluation of school-age students to determine eligibility for a learning disability program involves four steps: determine the student's current intellectual functioning; determine the student's current level of

academic functioning; determine the amount of discrepancy between current intellectual functioning and academic functioning and document that the discrepancy is the result of a learning disability including descriptions of learner characteristics and behavior.

(a) Psychological Evaluation. The student's cognitive/ intellectual functioning must be assessed by using a recent revision of an appropriate standardized and validated intelligence test. This evaluation shall be conducted by a DPI licensed school psychologist or a Board licensed psychologist. Variability or "scatter" within intelligence measures is expected and normal. It is inappropriate to select the higher of subscale, subtest, factor or other scores for use as an estimate of intellectual functioning without considerable supporting evidence including other assessment results. When there are verbal/ performance IQ discrepancies of at least 20 points on the Wechsler Scale, the higher scale IQ may be used to determine the achievement-ability discrepancy providing there is evidence that the higher score accurately reflects the student's intellectual functioning. Because of the importance of the intellectual assessment to the identification process, group intelligence tests, unjustified prorated scores or extrapolated scores and abbreviated forms shall not be used.

(b) Educational Evaluation. Evaluation of academic functioning for learning disabilities has two primary purposes:

(i) to define the level of functioning in order to determine a substantial discrepancy; and

(ii) to identify learner and environmental characteristics that can be used to document that the discrepancy results from a learning disability and to plan intervention strategies and program development.

Achievement difficulties may be identified in the areas of listening comprehension, oral expression, written expression, reading, reasoning, and/or mathematics. Individually administered, standardized, norm-referenced achievement tests are required to determine a discrepancy. Other procedures, such as curriculum-based assessment, review of written classwork, classwork observations of performance and expectations, criterion-referenced instruments, and informal tests should also be used to document specific disabilities. Comprehensive assessment of academic functioning should be conducted by professionals specifically trained to administer and interpret norm-referenced, criterion-referenced, and other diagnostic measures of achievement. Such professionals might include school psychologists, specially trained teachers or counselors. Achievement information obtained from more than one source must be integrated for a comprehensive view of academic functioning.

(c) Discrepancy Determination. Subtract achievement age standard score from the IQ score, assuming both measures have a mean of 100 and standard deviation of 15. If the test does not have a mean of 100 and standard deviation of 15, statistical procedures shall be implemented. Determine if the discrepancy is 15 points or more between achievement and ability. In cases where the multidisciplinary team determines that assessment measures did not accurately reflect the discrepancy between academic functioning and intellectual functioning, appropriate documentation must be used to verify the discrepancy. If the multidisciplinary team determines that the assessment measures did not

accurately reflect the discrepancy between achievement and ability, the team shall state in writing the assessment procedures used, the assessment results, the criteria applied to judge the importance of any difference between expected and current achievement, and whether a substantial discrepancy is present that is not correctable without the provision of special education.

(d) Documentation of Specific Learning Disability. This documentation will involve a systematic procedure for comparing information gathered in the evaluation process to identify behavioral and academic patterns of strengths and weaknesses (e.g., standardized tests, informal tests, observations, interviews, work samples, measures of adaptive and/or affective behaviors).

(4) Multidisciplinary Team. The multidisciplinary team shall provide a team framework for evaluating a child suspected of having a learning disability. The multidisciplinary team shall consist of, but not be limited to:

(a) the student's regular teacher;

(b) if the child does not have a regular teacher, then a regular classroom teacher qualified to teach a child of his/her age;

(c) a person licensed or trained in the area of learning disabilities;

(d) at least one person qualified by the State Department of Public Instruction to conduct individual diagnostic examinations of children, such as a:

(i) school psychologist;

(ii) speech-language specialist;

(iii) remedial reading teacher; or

(iv) specific learning disability teacher.

(5) The major responsibilities of the multidisciplinary team are:

(a) to collect or assist in compiling all data relevant to the determination of eligibility;

(b) to appoint one member of the team (other than the student's regular teacher) to observe the student's performance in the regular classroom setting and note relevant behaviors;

(c) to review all available data, including the observation data;

(d) to make a collective group decision as to whether or not the student meets the eligibility criteria, based on all required data;

(e) to write a report addressing all of the following areas:

(i) relevant behaviors noted during observation and the relationship of that behavior to the student's academic functioning;

(ii) educationally relevant medical findings, if any;

(iii) whether there is a significant discrepancy between current achievement and ability, which is not correctable without special educational and related services;

(iv) the basis for making the discrepancy determination;

(v) the determination of the team that the significant discrepancy is not primarily the result of another disabling condition, environmental, cultural and/or economic influences and/or lack of appropriate school experiences commensurate with age and ability;

(vi) whether the student has a specific learning disability.

(f) to have each team member certify by signing the written report with individuals who dissent providing statements of dissent from the decision. In case of disagreement among team members, the majority will constitute the decision. If the team composition is an even number and the decision is split, a person knowledgeable in the area of learning disability as specified by the Director, Exceptional Children Programs, shall be added to the team. A team member in disagreement with the team decision must submit a separate statement presenting his/her conclusion.

(g) to recommend an educational program to meet the unique instructional needs of the student and to provide recommendations to be used in the development of an individualized education program;

(h) to provide a team framework for evaluating a child for continuation in or exit from the specific learning disability program at the third year reevaluation.

NOTE: Not applicable for preschool children.

J. Speech-Language Impaired. Children may be identified as needing speech-language evaluations through mass screening efforts and/or referral. Children determined through screening or referral to need evaluations shall be assessed in the areas of articulation, language (form, content and function), voice and fluency. It is on the basis of such an evaluation that the determination as to the type and intensity of services shall be made.

(1) Articulation/Phonology. For a student to be considered for articulation/phonology intervention, the student's speech should be determined to have a negative impact on academic, social, and/or vocational functioning, and one or both of the following characteristics must exist: (1) two or more phonemic errors not expected at the student's current age or developmental level are observed during direct testing and/or conversational speech; (2) two or more phonological processes not expected at the student's current age or developmental level are observed during direct testing and/or in conversational speech. For a preschool child to be considered for articulation/ phonology therapy, the child's speech should be determined to have a negative impact on social-communicative interactions and one or both of the following characteristics must exist:

(a) two or more phonemic errors not expected at the child's current age or developmental level are observed during direct testing and/or conversational speech;

(b) two or more phonological processes not expected at the child's current age or developmental level are observed during direct testing and/or conversational speech.

(2) Language. A battery of two diagnostic measures is recommended with at least one assessing comprehension and one assessing production of language. Assessment instruments chosen may include normed tests, criterion referenced tests, and/or a language sample. Scores should be computed in standard scores, language quotients percentiles, and/or stanine scores when possible. For a student to be considered for intervention, the student's language should be determined to have a negative impact on academic, social, and/or vocational functioning, and one or both of the following characteristics must exist:

(a) norm reference language tests which yield two subtest or total test scores

with the following characteristics: 1.5 or more standard deviation below the mean, a language quotient/standard score of 78 (mean of 100), a stanine of two and/or a percentile of eight;

(b) non-standardized/informal assessment indicates that the student has difficulty understanding and/or expressing ideas and/or concepts to such a degree that it interferes with the student's social/educational progress. For a preschool child to be considered for language intervention, the child's language should be determined to have a negative impact on social-communicative interactions and one or both of the following characteristics must exist:

(i) norm reference language tests yield two subtest or total test scores with the following characteristics: 1.5 or more standard deviations below the mean, and language quotient/standard score of 78 (mean of 100), a stanine of two and/or a percentile of eight.

(ii) non-standardized/informal assessment indicates that the child has difficulty understanding and/or expressing ideas and/or concepts to such a degree that it interferes with the child's social-educational progress.

Many students, including those with developmental disabilities and, in particular, those classified as mentally handicapped, exhibit limitations with expressive and/or receptive communication skills. Not all such students are considered to have a speech-language impairment and in need of therapeutic intervention from the speech-language specialist. The speech-language specialist and other members of the IEP team should consider the efficacy of therapeutic intervention for each student and, in determining such, should consider whether or not enrolling a student for speech-language services will significantly change his/her ability to communicate.

(3) Voice. For a student to be considered for placement in a voice therapy program, he/she must demonstrate consistent deviations in vocal production that are inappropriate for chronological/mental age, sex, and ability. Further, the voice disorder should be determined to have a negative impact on academic, social, and/or vocational functioning.

(4) Fluency. For a student to be considered for placement in a fluency therapy program, he/she must demonstrate nonfluent speech behavior characterized by repetitions/prolongations as noted on a regular basis. Further, the fluency disorder should be determined to have a negative impact on academic, social, and/or vocational functioning.

K. Traumatic Brain Injured

(1) Screening Procedures: The following screening information shall be collected and considered in making decisions about the need for further interventions or evaluations:

(a)* observation(s) in the learning environment, by an appropriate third-party observer, which records the nature and severity of the child's learning and/or behavioral difficulties;

(b) dated documentation of conferences or attempts to conference with parents and/or guardians concerning the specific educational, behavioral, and/or social/emotional needs of the child;

(c) review of educational history and educational records to determine child's educational progress; particular attention should be paid to child's

progress prior to and following the injury;

(d) review of medical records

(e)* dated and signed documented evidence of at least two interventions attempted in the learning environment in order to assess behavioral and academic progress. Those interventions should be designed in consultation with school staff and/or community personnel. Interventions may include but not be limited to changes in the child's class schedule, curriculum, teachers, instructional techniques, and/or other interventions typically used with traumatic brain injured students.

(f) vision screening

(g) hearing screening,

*These screening procedures may be waived for students who have been medically diagnosed as traumatic brain injured and who have received medical and/or rehabilitative services in a medical or rehabilitation program or setting within the previous twelve months. The classroom interventions are not applicable to preschool children.

(2) Evaluation Procedures. The multidisciplinary evaluation to determine eligibility for traumatic brain injured programs shall include the following:

(a) Psychological evaluation for traumatic brain injury. For the purpose of making educational programming and placement decisions, a psychological evaluation for traumatic brain injury includes but is not limited to the evaluations of intellectual and academic functioning, memory, reasoning, behavior, attention/concentration, cognitive processing (e.g., perceptual, auditory, kinesthetic, and tactile), and social/emotional functioning. Psychological evaluation for traumatic brain injury must be conducted by school psychologists licensed by the State Department of Public Instruction, or by psychologists who are appropriately practicing in the specialty of neuropsychology and are licensed by the North Carolina State Board of examiners of Practicing Psychologists. All psychological evaluations for traumatic brain injury must be current within one year. All psychologists providing assessment of TBI students must meet the guidelines of the Exceptional Children Division for training in the assessment of traumatic brain injury and be listed on the Exceptional Children Division's registry of approved providers (hereafter referred to as the registry.)

(b) Educational evaluation. The evaluation shall include but not be limited to an assessment of the following areas:

(i) the learning environment including curriculum and task demands;

(ii) present levels of academic functioning, including strengths and weaknesses;

(iii) present level of academic functioning compared to academic functioning prior to the traumatic brain injury, if available;
See Section .1510 B for definition of educational evaluation as it relates to preschool children.

(c) Medical history. A medical history shall be obtained by a licensed physician, or other competent professional (e.g., school nurse.) The medical history shall include a review of the student's current health

status, as well as documentation of injuries, diseases, or medical conditions which may have resulted in, or contributed to, traumatic brain injury;

(d) Motor evaluation;

(e) Speech-language screening;

(f) Evaluation of vision and hearing processes typically affected by traumatic brain injury (e.g. visual field-cuts, neurologically-based hearing impairments, etc.)

If students have been medically diagnosed as traumatic brain injured and have received services in a medical and/or rehabilitation setting and if the above data are available and are recent, this can be used solely or in combination with other data by the School Based Committee and the Administrative Placement Committee or the Preschool Transition/Placement Committee in making educational programming and placement decisions for traumatic brain injured students.

(3) Eligibility Criteria: In order to determine initial eligibility for traumatic brain injured services, the following are required:

(a) written verification by a licensed physician or a licensed psychologist appropriately practicing in the specialty of neuropsychology that the student has sustained an injury, from which brain injury can be inferred. No time limits exist for written verification.

(b) evidence which documents that:

(i) the child's academic performance behavior, and/or cognitive or social/emotional development has been, or may be, significantly impaired by the injury or condition.

(ii) special education is needed as documented by Section .1509 J (2) (a -f).

NOTE: Those students with non-traumatic brain injury (e.g., tumor, vascular/circulatory disorders, degenerative diseases, etc.)should be considered for assessment as outlined above.

L. Visually Impaired. The identification of preschool children with visual impairments includes but is not limited to:

(1) observation of physical, behavioral and environmental characteristics:

(a) shutting or covering one eye, tilting head or thrusting head forward, squinting eyelids together;

(b) difficulty with work requiring vision;

(c) avoidance of near work task or irritation when required to do near work;

(d) inability to see distant objects;

(e) difficulty with navigation; and

(f) eye appearance (e.g., crossed eyes, nystagmus);

(2) vision screening with appropriate instruments (e.g., Tumbling E); and

(3) examination by an ophthalmologist or optometrist.

For school age children with visual impairments, the comprehensive evaluation procedures shall include an evaluation to determine the appropriate reading/writing medium for the student. A Braille Skills Inventory shall be administered by a professional licensed as a teacher of the visually impaired and shall include

consideration of braille, large print, and regular print. The assessment may lead to the determination that, rather than any one of these media, a combination of any or all is the most appropriate. The Individualized Education Program Committee shall consider this determination in making its decision, and its decision shall be included in the development of the student's Individualized Education Program. If the IEP Committee determines that braille instruction is appropriate, then the local education agency shall assure that braille instruction is provided by appropriately trained persons who have demonstrated braille competency at a level consistent with standards adopted by the Library of Congress.

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Eff. October 1, 1978; G. S. 115C - 146.1 through 146.4;
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.1510 REQUIRED AND RECOMMENDED SCREENING AND EVALUATION FOR INITIAL PLACEMENT

Specific screening and evaluation procedures are required for the various categories of exceptionality and for children in hospital or home programs. Some evaluations are required for a particular handicap and others are highly recommended. The term developmental refers to preschool programs. Screening shall be followed by evaluation when appropriate. A full and individualized evaluation of a child's needs must be conducted before any action is taken with respect to the initial placement of a child with special needs in a special education program. Required and recommended screening and evaluations for each area of exceptionality are as follows:

A. Academically Gifted

(1) required screening and evaluation before placement:
- (a) intelligence quotient or aptitude percentiles;
- (b) educational evaluation (achievement test total or subtlest scores);
- (c) student performance based on grades or demonstrated skills/products, as needed.

(2) recommended screening and evaluation before placement: further standardized testing when environmental, cultural, or handicapping conditions are judged to have affected the reliability of identification data.

NOTE: Not applicable to preschool children.

B. Autistic

(1) required screening and evaluation before placement:
- (a) hearing screening;
- (b) speech-language screening;
- (c) vision screening;
- (d) review of early history;
- (e) adaptive behavior evaluation;
- (f) educational evaluation;
- (g) psychological evaluation.

(2) recommended screening and evaluation before placement:
- (a) medical/neurological evaluation;
- (b) audiological evaluation.

C. Behaviorally-Emotionally Handicapped

(1) for school-age students required screening and evaluation before placement:
- (a) social/developmental history; see Section .1509 B (3) (d);
- (b) two interventions in regular setting designed in consultation with other staff members; see Section .1509 B (1) (a);
- (c) observation by an independent observer; see Section .1509 B (1) (b);
- (d) conferences with parents; see Section .1509 B (1) (c);
- (e) records review;
- (f) hearing screening;
- (g) vision screening;
- (h) behavioral-emotional evaluation; see Section .1509 B(3) (a);
- (i) educational evaluation; see Section .1509 B (3) (b);
- (j) psychological evaluation; see Section .1509 B (3) (c).

(2) recommended screening and evaluation before placement:
- (a) medical evaluation;
- (b) screening;
- (c) speech-language evaluation.

NOTE: Not applicable for preschool children.

D. Deaf-Blind

(1) required screening and evaluation before placement:
- (a) motor screening;
- (b) adaptive behavior evaluation;
- (c) audiological evaluation;
- (d) educational evaluation;
- (e) medical evaluation;
- (f) ophthalmological or optometric evaluation;
- (g) psychological evaluation;
- (h) speech-language evaluation.

E. Hearing Impaired

(1) required screening and evaluation before placement:
- (a) vision screening;
- (b) audiological evaluation;
- (c) educational evaluation;
- (d) otological evaluation;
- (e) speech-language evaluation.

(2) recommended screening and evaluation before placement:
- (a) health screening;
- (b) psychological evaluation;
- (c) adaptive behavior evaluation;
- (d) ophthalmological or optometric evaluation;
- (e) social history.

F. Educable Mentally Handicapped

(1) required screening and evaluation before placement:
- (a) health screening;
- (b) hearing screening;
- (c) motor screening;
- (d) speech-language screening;
- (e) vision screening;
- (f) adaptive behavior evaluation;
- (g) educational evaluation;
- (h) psychological evaluation which shall include an intellectual evaluation.

(2) recommended screening and evaluation before placement:
- (a) audiological evaluation
- (b) vocational evaluation for students age 14 or older;
- (c) social history

NOTE: Not applicable for preschool children.

G. Trainable Mentally Handicapped

(1) required screening and evaluation before placement:
- (a) health screening;
- (b) hearing screening;
- (c) motor screening;
- (d) speech-language screening;
- (e) vision screening;
- (f) adaptive behavior evaluation;
- (g) educational evaluation;
- (h) psychological evaluation which shall include an intellectual evaluation.

(2) recommended screening and evaluation before placement:
- (a) audiological evaluation;
- (b) vocational evaluation for students age 14 or older;
- (c) social/developmental history

NOTE: Not applicable for preschool children.

H. Severely/Profoundly Mentally Handicapped

(1) required screening and evaluation before placement:
- (a) hearing screening;
- (b) vision screening;

(c) adaptive behavior evaluation;
(d) communication evaluation; see Section .1509 F (5);
(e) educational evaluation;
(f) medical evaluation;
(g) motor evaluation;
(h) psychological evaluation;

NOTE: Not applicable for preschool children.

I. Multihandicapped

(1) required screening and evaluation before placement:
(a) hearing screening;
(b) vision screening;
(c) adaptive behavior evaluation;
(d) communication evaluation; see Section .1509 F (5);
(e) educational evaluation; see Section .1509 F (2);
(f) medical evaluation;
(g) motor evaluation; see Section .1509 F (4);
(h) psychological evaluation; see Section .1509 F (3).

(2) recommended screening and evaluation before placement:
(a) audiological evaluation;
(b) ophthalmological or optometric evaluation.

NOTE: Not applicable for preschool children

J. Other Health Impaired.

(1) required screening and evaluation before placement:
(a) educational evaluation;
(b) medical evaluation.

K. Orthopedically Impaired

(1) required screening and evaluation before placement:
(a) hearing;
(b) vision screening;
(c) educational evaluation;
(d) medical evaluation;
(e) motor evaluation.

(2) recommended screening and evaluation before placement:
(a) adaptive behavior evaluation;
(b) speech-language screening.

L. Preschool Delayed/Atypical

(1) required screening and evaluation before placement:
(a) health screening, including vision and hearing screening;

(b) speech-language screening;
(c) motor screening;
(d) educational evaluation;
(e) psychological evaluation, including cognitive and social-emotional;
(f) adaptive behavior;
(g) social history;
(h) observation.

M. Pregnant Students.

(1) required before placement:
(a) medical diagnosis;
(b) written recommendation verifying need for special education.

N. Specific Learning Disabled

(1) required screening and evaluation before placement for school-age students:
(a) conferences with parents (initial placement only; see Section .1509 H (2));.1510
(b) observation by an independent observer; see Section.1509 H (2);
(c) two interventions in regular setting designed in consultation with other staff members; see Section.1509 H (2);
(d) information concerning the student's educational and medical history, school attendance record, performance in relation to peers, social functioning and environment and cultural status see Section .1509 H (2));
(e) hearing screening;
(f) vision screening which measures far and near acuity;
(g) educational evaluation, including the need for assistive technology when indicated;
(h) psychological evaluation which shall include an intellectual evaluation

(2) recommended screening and evaluation before placement:
(a) health screening;
(b) medical evaluation;
(c) motor screening;
(d) speech-language evaluation.

NOTE: Not applicable for preschool children.

O. Speech-Language Impaired

(1) required screening and evaluation before placement:
(a) hearing screening;
(b) speech-language screening
(c) educational evaluation; [See Section .1501 B (4) for requirement for educational evaluation for children whose disability is one of speech-language impairment only.]
(d) speech-language evaluation administered to assess performance in those areas in which the student failed to demonstrate appropriate performance on screening; see Section .1509 I.

(2) recommended screening and evaluation before placement:
(a) health screening;
(b) psychological evaluation;
(c) vision screening.

P. Traumatic Brain Injured

(1) required screening and evaluation before placement;
(a)* observation(s) in the learning environment;
(b) conferences with parents;
(c) review of educational history and records;
(d) review of medical records;
(e)* two interventions in the learning environment;
(f) vision screening;
(g) hearing screening;
(h) speech/language screening;
(i) psychological evaluation for traumatic brain injury;
(j) educational evaluation;
(k) medical history;
(l) motor evaluation;
(m) evaluation of vision and hearing processes.

*These screening procedures may be waived for students who have been medically diagnosed as traumatic brain injured and who have received medical and/or rehabilitative services in a medical or rehabilitation program or setting within the previous twelve months.

Q. Visually Impaired

(1) required screening and evaluation before placement:
(a) hearing screening;
(b) educational evaluation;
(c) ophthalmological or optometric evaluation;
(d) Braille skills inventory for school-age children only.

(2) recommended screening and evaluation before placement:
(a) medical evaluation;
(b) psychological evaluation;
(c) adaptive behavior evaluation;
(d) speech-language evaluation;
(e) audiological evaluation.

History Note: Statutory Authority G. S. 115C-113
Eff. October 1, 1978; G. S. 115C-146.1 through 146.4;
Eff. July 1, 1991; amended Eff. July 11, 1991; December 7, 1989; January 1, 1985;
September 28, 1981; September 30, 1980; July 15, 1979.

.1511 REEVALUATION

A. Appropriate in-depth reevaluation of children with disabilities must be completed at least every three years or more frequently if conditions warrant or if the child's parent or teachers request it in order to

determine the appropriateness of current educational status of students and to determine whether or not a student continues in or exits from a special education program.

The date by which reevaluation must occur is determined by the date final placement was made by the administrative placement committee. Although each test does not have to be administered exactly three years from the date it was previously given, all tests must be completed prior to the time the committee reviews the placement decision. That review must be within three years of the time the last placement decision was made by the administrative placement committee. The parent must be given the result of the reevaluation in writing after the reevaluation has been completed and all other components of prior notice as defined in .1517.

B. Required reevaluations for children with disabilities are as follows:

(1) Autistic
- (a) hearing screening;
- (b) speech-language screening;
- (c) vision screening;
- (d) adaptive behavior evaluation;
- (e) educational evaluation;
- (f) psychological evaluation.

(2) Behaviorally-Emotionally Handicapped
- (a) hearing screening;
- (b) vision screening;
- (c) behavioral-emotional evaluation;
- (d) educational evaluation;
- (e) psychological evaluation.

(3) Deaf-Blind
- (a) speech-language screening;
- (b) audiological evaluation, followed by an otological evaluation when appropriate;
- (c) educational evaluation;
- (d) medical evaluation;
- (e) ophthalmological or optometric evaluation or physician's written verification of continuing visual impairment;
- (f) psychological evaluation.

(4) Hearing Impaired
- (a) speech-language screening;
- (b) vision screening;
- (c) audiological evaluation followed by an otological evaluation when appropriate;
- (d) educational evaluation.

(5) Educable Mentally Handicapped
- (a) reevaluation prior to the 14th birthday shall include:
  - (i) hearing screening;
  - (ii) motor screening;
  - (iii) speech-language screening;
  - (iv) vision screening;
  - (v) adaptive behavior evaluation;

(vi) educational evaluation;
(vii) psychological evaluation which shall include an intellectual evaluation.

(b) reevaluation for children who have reached the 14th birthday and have had at least one reevaluation shall include:
(i) adaptive behavior evaluation;
(ii) educational evaluation;
(iii) psychological evaluation (use of individual intellectual assessment to be determined by the multidisciplinary evaluation team.)

(6) Trainable Mentally Handicapped
(a) reevaluation prior to the 14th birthday shall include:
(i) hearing screening;
(ii) motor screening;
(iii) speech-language screening;
(iv) vision screening;
(v) adaptive behavior evaluation;
(vi) educational evaluation;
(vii) psychological evaluation which shall include an intellectual evaluation.

(b) reevaluation for children who have reached the 14th birthday and have had at least one reevaluation shall include:
(i) adaptive behavior evaluation;
(ii) educational evaluation;
(iii) psychological evaluation (use of individual intellectual assessment to be determined by the multidisciplinary evaluation team.).

(7) Severely/Profoundly Mentally Handicapped
(a) communication screening;
(b) hearing screening;
(c) motor screening;
(d) vision screening;
(e) educational evaluation;
(f) medical evaluation;
(g) psychological evaluation (appropriate instruments to be determined by the multidisciplinary evaluation team.)

(8) Multihandicapped
(a) communication screening;
(b) hearing screening;
(c) motor screening;
(d) vision screening;
(e) educational evaluation;
(f) medical evaluation;
(g) psychological evaluation (appropriate instruments to be determined by the multidisciplinary evaluation team).

(9) Other Health Impaired
- (a) educational evaluation;
- (b) medical evaluation or physician's written verification of continuing health impairment.

(10) Orthopedically Impaired
- (a) hearing screening;
- (b) motor screening;
- (c) vision screening;
- (d) educational evaluation;
- (e) medical evaluation or physician's written verification of continuing orthopedic impairment.

(11) Specific Learning Disabled
- (a) hearing screening;
- (b) vision screening which measures far and near acuity;
- (c) educational evaluation to include assistive technology when appropriate.;
- (d) psychological evaluation which shall include an intellectual evaluation.

(12) Speech-Language Impaired
- (a) hearing screening;
- (b) educational evaluation;
- (c) speech-language evaluation.

(13) Traumatic Brain Injured
- (a) Required evaluations for children who have not been reevaluated previously shall include:
  - (i) psychological evaluation for traumatic brain injury;
  - (ii) educational evaluation;
  - (iii) updated medical history;
  - (iv) motor screening;
  - (v) evaluation of vision and hearing processes.
- (b) Required evaluations for children who have had at least one reevaluation shall include:
  - (i) psychological evaluation which may include an intellectual evaluation;
  - (ii) educational evaluation;
  - (iii) updated medical history

The nature of the traumatic brain injury (TBI) recovery process is unique in that significant changes can occur in cognitive, behavioral and motoric functioning during the first or second year following the brain injury. Thereafter, recovery may plateau in terms of recovering skills and abilities present before the injury. In view of these circumstances, it is crucial that the progress of TBI students be monitored, especially during the first two years following the injury, and that the IEP reflect the changes necessary to maintain effective programming.

(14) Visually Impaired

(a) hearing screening;
(b) educational evaluation;
(c) ophthalmological or optometric evaluation or physician's statement that visual impairment is unchanged.
(d) braille skills inventory

NOTE: If an LEA has a program of regular screening for hearing, speech and vision, those screenings may be omitted from reevaluation if the results are readily available.

C. Required reevaluation for the academically gifted:
One reevaluation shall be required for a child who is identified as academically gifted prior to the second semester of the third grade. For a child who is identified during the second semester of the third grade or thereafter, no further reevaluation shall be required. However, a reevaluation may occur at any time a student's performance indicates the need for such and when the program design changes. A review of the academically gifted student's program shall be made annually.

D. The reevaluation of children identified as preschool developmentally delayed shall occur prior to entry into first grade or three years from date of placement, whichever occurs first, or more frequently if conditions warrant. Preschool children identified in other categories shall be reevaluated in accordance with the three-year reevaluation requirement. The placement of and programming for preschool children with disabilities must be reviewed annually to determine changes in developmental status and services. This review will consist of a comprehensive analysis of all available assessment data, parent and teacher reports of developmental progress, and other available and pertinent information.

E. Parental approval is not required prior to reevaluation. The parent(s) must be provided written prior notice that the child is being reevaluated and the notice must meet the requirements of Section .1517. If the parent objects, the due process procedures set forth in Section .1517 may be followed. Students who upon reevaluation no longer qualify for placement in a special education program shall not remain in the program beyond the present grading period.

History Note: Statutory Authority G. S. 115C-113
Eff. July 15, 1979; G. S. 146.1 through 146.4;
Eff. July 1, 1991;
Amended Eff. July 11, 1991; May 2, 1991; December 7, 1989; July 1, 1986; November 1, 1984; September 28, 1981.

.1512 INDIVIDUALIZED EDUCATION PROGRAM FOR CHILDREN WITH DISABILITIES, GROUP EDUCATION PROGRAM FOR THE ACADEMICALLY GIFTED AND WRITTEN EDUCATION PROGRAM FOR THE PREGNANT

A. The educational placement of a child with a disability must be based on his or her individualized education program, and each local educational agency shall conduct a meeting for the purpose of developing, reviewing, or revising an individualized education program for each child with a disability. An individualized component to the Group Education Program shall be developed for a student who scores at or above the 98th percentile on an individual aptitude test and has been considered for placement in the academically gifted program by the School-Based Committee and the Administrative Placement Committee but did not meet the eligibility requirement to be classified as academically gifted by obtaining 98 points on the combination of aptitude, achievement, and grades. The State Department of

Public Instruction shall monitor the effectiveness of these programs.

B. Composition of Individualized Education Program Committee. The entire school-based committee or preschool transition/placement committee may or may not be involved; however, the following individuals must be involved in the development and writing of the individualized education program:

(1) A representative of the local educational agency other than the child's teacher who shall be qualified to provide, or supervise the provision of, specifically designed instruction to meet the unique needs of the child;

(2) The child's teacher;

(3) The parent(s) or guardian(s) of the child;

(4) The child, when appropriate;

(5) For a child with a disability who has been evaluated for the first time, the local educational agency shall have:
   (a) a member of the evaluation team participate in the Individualized Education Program meeting, or
   (b) a representative of the local educational agency, the child's teacher, or some other person present at the meeting who is knowledgeable about the evaluation procedures used with the child and who is familiar with the results of the evaluation.

(6) Transition services participants
   (a) If the purpose of the meeting is the consideration of transition services for a student, the local education agency shall invite:
      (i) the student; and
      (ii) a representative of any other agency that is likely to be to be responsible for providing or paying for transition services.
   (b) If the student does not attend, the local education agency shall take other steps to ensure that the student's preferences and interests are considered.
   (c) If an agency invited to send a representative to a meeting does not do so, the local education agency shall take other steps to obtain the participation of the other agency in the planning of any transition services. Other individuals at the discretion of the agency or the parent may be invited to attend the meeting.

C. Content of the Individualized Education Program. The individualized education program for each child must include:

(1) a statement of the child's present levels of educational performance;

(2) a statement of annual goals;

(3) a statement of short-term instructional objectives;

(4) a statement of special education and related services to be provided to the child;

(5) a description of the extent to which the child will participate in regular education programs or natural preschool environments and a description of the program to be provided;

(6) the projected dates for initiation of services and the anticipated duration of services;

(7) objective criteria, evaluation procedures, and schedule for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

D. The transition component shall include:

(1) a statement of the needed transition services for students with disabilities beginning no later than age 16, and at a younger age to the extent appropriate;

(2) a statement, if appropriate, of interagency responsibility if a State or local agency, other than the public agency responsible for the student's education is responsible for providing or paying for needed transition services;

(3) a statement that where a participating agency, other than the public agency responsible for the student's education, fails to provide agreed upon transition services contained in the Individualized Education Program, the public agency shall, as soon as possible, reconvene a meeting of the participants on the Individualized Education Program committee to identify alternative strategies to meet the transition objectives that were included in the student's individualized education program and revise the IEP if necessary.

(4) The contents of the transition plan must meet the requirements of Section .1501 L.

(5) If the IEP committee determines that services are not needed in one or more of the areas specified in Section .1501 L, the IEP must include a statement to that effect and the basis upon which the determination was made.

E. Maintenance of the Individualized Education Programs. The local educational agency shall maintain records of the individualized education program for each child with a disability. The individualized education program is considered a confidential record.

F. Department of Human Resources and Department of Correction. In the facilities and programs of the Department of Human Resources and the Department of Correction, the individualized education program shall, in addition to (c), be planned in collaboration with those other individuals responsible for the design of the total treatment and/or habilitation plans; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent. For purposes of these programs, requirements for parent(s) or guardian(s) involvement are limited to educational matters only in the identification, placement and special education programming of children with disabilities.

G. Private School Placement.

(1) An individualized education program shall be developed by the local educational agency for any child who is enrolled in a parochial or other private school but who receives

special education or related services from a local educational agency.

(2) Before a local educational agency places a child with a disability in or refers a child to a private school or facility, the local educational agency shall initiate and conduct with a representative of the private school in attendance an individualized education program meeting before referring the child to a private school or facility. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) After a child is placed in a private school, any meeting to review or revise the individualized education program may be initiated and conducted by the private school at the discretion of the public agency.

(4) If the private school initiates and conducts an individualized education program meeting, the public agency shall assure that the parent(s) and an agency representative are involved in any decision about the individualized education program and agree to any proposed change in the program before the changes are implemented.

(5) If a child with a disability is enrolled in a parochial or private school and receives special education or a related service from a public agency, the public agency shall ensure that a representative of the private school attends each individualized education program meeting or uses other methods to ensure participation such as individual or conference phone calls.

(6) Even if a private school implements a student's individualized education program, responsibility for compliance with this part remains with the local educational agency.

H. Timelines.

(1) An individualized education program shall be developed before special education and related services are provided to the child.

(2) For a child with a disability who is receiving special education, the individualized education program shall be revised as often as determined necessary but at a minimum annually. As the school year begins, the individualized education program shall be reviewed by the teacher or teachers responsible for implementation so that the program will allow for changes needed.

(3) For a child with a disability not receiving special education at the present time, the individualized education program shall be developed within 30 days of a determination that the child requires special education.

(4) An individualized education program shall be implemented as soon as possible following the individualized education program meeting.

I. Parent Participation.

(1) Steps shall be taken to ensure that one or both of the parents or guardians of the child with a disability are present at each meeting or are afforded the opportunity to participate, including notifying parents early enough to ensure they will have the

opportunity to participate, and scheduling the meeting at a mutually agreed upon time and place.

(2) The notice from the local educational agency informing the parent(s) of the individualized education program meeting must contain the purpose, the time, the location of the meeting, and the persons who will be in attendance. If the purpose of the meeting is transition, the notice must indicate that fact and show that the student will be invited, as well as identifying any other agency that will be invited to send a representative.

(3) If neither parent can attend, the local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(4) A meeting may be conducted without a parent in attendance if the local education agency is unable to convince the parent(s) that they should attend. In this case the local educational agency must have a record of its attempts to arrange a mutually agreed upon time and place, such as:

(a) detailed records of telephone calls made or attempted and the result of those calls;

(b) copies of correspondence sent to the parent/guardian and any responses received;

(c) detailed records of visits made to the home or place of employment of parent/guardian and the results of those visits.

(5) The local educational agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(6) Upon request by the parent, the local education agency shall provide a copy of the individualized education program.

J. Review of the Individualized Education Program.

(1) The individualized education program shall be reviewed at least annually, and any necessary changes shall be made to the individualized education program. A review shall occur more frequently if warranted, or when requested by the teacher or the parent.

(2) The student's parent(s) or guardian(s) must be invited to participate in the review.

(3) Recommendations for any change in the student's placement must be made to the administrative placement committee or to the preschool transition/placement committee.

(4) The student's parent(s) or guardian(s) must be notified of any change in placement, and due process procedures must be followed.

K. Liability. An agency, teacher or other person shall not be held liable if the child does not reach the growth projected in the annual goals and objectives in the individualized education program but must make a "good faith effort" to assist the child in achieving the objectives and goals.

L. Group Education Programs for the Academically Gifted. Each local educational agency shall prepare group education programs (GEPs) for academically gifted students. The group education program shall be used to describe an instructional program that is appropriately differentiated for a group of two or more academically gifted students who share similar academic characteristics and/or program needs. For students whose special needs are not adequately addressed by the group education program, an individualized component shall be considered. The group education program shall be in place within 30 calendar days of the first pupil day or the first parent conference, whichever first. The group education program shall be reviewed at least annually by the teacher responsible for the development and implementation of the GEP in order to aid in recommendations for the next year's placement and program. The group education program shall include:

(1) The differentiated program and services:
   (a) a brief narrative describing the program content;
   (b) annual goals;
   (c) methods and procedures for determining that the goals have been met;
   (d) additional components if any, for a student(s) whose needs are not already addressed and a description of required individualization.

(2) Documentation of opportunities for parents to participate in the group education program process. Because the group education program describes the instructional program for academically gifted students, the teacher responsible for implementation shall be responsible for group education program development. Group or individual meetings to promote parental involvement in group education program development may be held. Student participation, if appropriate, is recommended.

(3) The group education program shall contain the following:
   (a) a list of the students' names;
   (b) the name of the school;
   (c) the program type, grade level, or subject area class (Examples: Elementary Enrichment; 11th Grade English--Advanced);
   (d) school year;
   (e) name of instructor;
   (f) date of annual review; and
   (g) amount of time in Academically Gifted program(s).

(4) The Group Education Program Committee shall consist of the following:
   (a) Academically gifted teacher/coordinator;
   (b) Regular teacher;
   Other members may be invited at the discretion of the local education agency.

M. Educational Program for the Pregnant. Local education agencies shall develop a written program to meet the special educational needs of pregnant students.

History Note: Statutory Authority G. S. 115C-113;
Eff. October 1, 1978; June 21, 1989
Amended Eff. July 11, 1991; December 7, 1989;
November 1, 1983, September 28, 1981;

.1514 CONFIDENTIALITY AND ACCESS TO RECORDS

A. Formulation of Policy and Procedures. Each local educational agency shall formulate and adopt a policy of:

(1) informing parents of students or eligible students of their rights;

(2) permitting parents of students or eligible students to inspect and review the education records of the student, including at least:
   (a) a statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;
   (b) an understanding that it may not deny access to an education record, a description of the circumstances in which the agency feels it has a legitimate cause to deny a request for a copy of such records;
   (c) a schedule of fees for copies; and
   (d) a listing of the types and locations of education records maintained by the educational agency and the titles and addresses of the officials responsible for those records.

(3) not disclosing personally identifiable information from the education records of a student without prior written consent of the parent of the student or the eligible student. The policy shall include, at least:
   (a) a statement of whether the educational agency will disclose personally identifiable information from the education records of a student and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agencies consider to be a "legitimate educational interest"; and
   (b) a specification of the personally identifiable information to be designated as directory information.

(4) maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained, and permitting a parent or an eligible student to inspect that record;

(5) providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing. The parent of a student or an eligible student may place a statement in the education records of the student which shall be maintained as long as the record is maintained, in the event that the parent or eligible student does not agree with the results of the hearing.

The policy required to be adopted by paragraph (A) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

B. Annual Notification of Rights.

(1) Each local educational agency shall give parents of students in attendance or eligible students in attendance annual notice by such means as are reasonably likely to inform them of the following:

(a) their rights concerning confidentiality and access to records. The notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained;
(b) the right to file complaints concerning alleged failures by the educational agency to comply with confidentiality requirements; and
(c) a list of languages in which the notice is available.

(2) Agencies shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

C. Access Rights.

(1) A parent, legal guardian, or eligible student has the right to read, inspect, or copy the student's education records maintained by the local educational agency and to have a representative of the parent inspect and review the records. Upon request, parents shall be entitled to have these records fully explained, interpreted and analyzed for them by the staff of the agency. Such requests shall be honored within a period of time, but in no case more than 45 days after the request has been made. Eligible student is defined as one who has reached the age of majority, 18 years, unless he/she has been declared incompetent by the court. The term "education records" does not include personal notes of teachers or professionals working with the child. The agency should comply with a request to inspect the records prior to the meeting regarding an individualized education program or hearing. These records relate to the identification, evaluation, and placement of the child including the records on free appropriate public education rights when the public agency is unable to supply an appropriate education and seeks to purchase appropriate services from a private or public provider.

(2) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(3) If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(4) A participating educational agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A participating agency may not charge a fee to search for or to retrieve information under this part.

D. Prior Consent for Disclosure Required.

(1) An educational agency shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student to a third party, other than directory information, except as provided in (E) of this section.

(2) Whenever written consent is required, an educational agency may presume that the parent of the student or the eligible student giving consent has the authority to do so

unless the agency has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation, or custody, which provides to the contrary.

(3) The written consent required by paragraph (D) (1) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

(a) a specification of the records to be disclosed,
(b) the purpose or purposes of the disclosure, and
(c) the party or class of parties to whom the disclosure may be made.

(4) When a disclosure is made pursuant to paragraph (D) (1) of this section, the educational agency shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

E. Parental Consent.

(1) Parental consent is required prior to release of education records to a third party, except:

(a) school officials within the local educational agency who have legitimate educational interests;
(b) officials of another school or local educational agency in which the student intends to enroll or obtain services;
(c) certain authorized representatives of the state and federal government who are determining eligibility of the child for aid as provided under Public Law 94-142;
(d) when required by a judicial order or any lawfully issued subpoena upon condition that parents/students are notified by the local educational agency of all such orders or subpoenas in advance of compliance.

(2) All other persons may gain access to a student's record only with the specific written consent of the parent(s) or guardian(s) or student of majority age.

(3) Recipients of student records should be cautioned that student information may not be released to third parties without the consent of the parent/legal guardian.

(4) When a parent refuses to provide consent and the agency feels that the record must be shared with another party to ensure appropriate education of the child, the agency must use the hearing procedures in order to compel consent which could be ordered by the hearing officer.

(5) The participating agency must: keep a record of parties obtaining access to education records (name of party, date of access, and purpose of access); provide parents on request a list of types and locations of education records; and maintain, for public inspection, a current listing of names and positions of those employees within the agency who may have access to personally identifiable information.

(6) Information from a student's record should be furnished without the parent's or student's consent when required by a judicial order or any lawfully issued subpoena upon condition that parents/students are notified by the local educational agency of all such

orders or subpoenas in advance of the compliance.

F. Amendment of Records at Parent's Request.

(1) A parent who believes that data which are collected and maintained are inaccurate, misleading or in violation of the privacy or other rights of the child may request the participating agency which maintains the data to make appropriate amendments to the data.

(2) The participating agency shall decide whether to amend the data in accordance with the request within a reasonable period of time of receipt of the request.

(3) If the agency decides to refuse to amend the data in accordance with the request, it shall so inform the parent of the refusal and advise the parent of the right to a hearing.

G. Right to a Hearing.

(1) A parent, legal guardian or eligible student has a right to a hearing to challenge the validity of the contents of the child's record. They have the right to add to records, data and information a written explanation or clarifications thereof and to cause the expunction of incorrect, outdated, misleading, or irrelevant entries. On the agency's refusal to delete such entries, the parents may request a hearing pursuant to Part 99 of the Family Educational Rights and Privacy Act.

(2) If, as a result of the hearing, the agency decides that the data are inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the data accordingly and so inform the parent in writing.

(3) If, as a result of the hearing, the agency decides that the data are not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the data and setting forth any reasons for disagreeing with the decision of the agency.

(4) Any statements or explanations placed in the records of the child under the guidelines of the above paragraph shall be maintained by the agency as long as the record or contested portion thereof is maintained by the agency; and if the records of the child or the contested portion there of is disclosed by the agency to any party, the explanation shall also be disclosed to the party.

(5) The public agency shall make its decision in writing within a reasonable period of time after the hearing.

(6) The decision must be based solely on the evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision.

H. Safeguards.

(1) Each agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(2) One official in each agency shall assume responsibility for insuring the confidentiality of any personally identifiable information. This official may assign personnel in each school to ensure confidentiality.

(3) All persons collecting or using confidential information must receive training or information regarding State policies and procedures under Section 300.129 (IDEA) and 34 CFR, Part 99 (FERPA).

(4) Each agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency who have access to personally identifiable information.

I. Destruction of Information.

(1) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. The agency should inform the parent that the records may be destroyed but at the parent's request a copy of the record would be sent.

(2) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address and phone number, his or her grades, attendance records, classes attended, grade level completed, and year completed may be maintained without time limitation.

(3) Parents should be informed, prior to destruction, that the records may be needed by the child or the parent for social security benefits or other purposes. If the parent still requests that the information be destroyed, the records are to be destroyed, retaining only information in (2) above.

J. Children's Rights. A student who is eighteen (18) years or older has the same rights that his parents or guardian previously had.

History Notes: Statutory authority G.S. 115C-114
Eff. July 15, 1979;
Amended Eff. July 11, 1991; November 1, 1984;
September 28, 1981;September 30, 1980.

.1515 CONTINUUM OF PROGRAMS AND SERVICES -- LEAST RESTRICTIVE ENVIRONMENT

A. To the maximum extent appropriate, children with special educational needs including children in public or other care facilities are educated with children who are not disabled. Each child with special needs is to participate with children who are not children with special needs in services and activities to the maximum extent appropriate to the needs of the child in both non-academic and extracurricular services including meals, recess period, counseling services, recreational activities, special interest groups or clubs sponsored by the local educational agency. Each child with special needs is to be placed as close as possible to his/her home. Unless the individualized education program for children with disabilities, group education program for the academically gifted or written educational program for the pregnant requires some other arrangement, the child is to be educated in the school which he/she would attend if not disabled, academically gifted or pregnant. When the regular class environment or natural setting does not prove satisfactory in

meeting the needs of the children, consultant or supportive services, remedial or advanced instruction and/or special instructional materials should be provided prior to removing them from the regular classroom or the natural preschool environment/setting. Special classes, separate schools, or removal of children requiring special education from the regular educational environment shall occur only when the needs of the children are such that education in regular classes or the natural preschool environments/settings even with the use of supplemental aids and services, cannot be accomplished satisfactorily. Each State agency shall make arrangements with public and private institutions as may be necessary to ensure that the least restrictive is effectively implemented. Each child with special needs shall have his/her educational placement determined at least annually and this placement is based on the child's IEP. The requirement to educate children with disabilities with children without disabilities shall apply to children with disabilities in public and private institutions or other care facilities.

Placement is to be made on the basis of the individual student's educational needs as stated in the IEP. The following conditions are not acceptable reasons for determining placement:

1. category of handicapping condition,

2. configuration of the service delivery system,

3. availability of educational or related services,

4. availability of space,

5. curriculum content or methods of curriculum delivery, or

6. administrative convenience.

B. Each local educational agency shall provide access to a facility(s) that will enable each student with special needs to have his/her individual educational needs met. No identified student with special needs shall, because the facilities are inaccessible to or unusable by the student, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that is needed to meet his/her special educational needs.

C. Each local educational agency shall explore available local resources and determine whether the needed services are being offered by an existing public or private agency. When a specified special education or related service is being offered by a local, public or private source, the local educational agency shall negotiate for the purchase of that service or shall present full consideration of alternatives and the recommendations to the State Board.

A new program for special education or related services shall be developed with the approval of the Board only when:

(1) that service is not being provided by existing public or private resources, or

(2) the service cannot be purchased from existing providers. Local educational agencies may expand an existing program or services without Board approval.

D. In order that a child's needs can be met, a number of options shall be made available for the delivery of programs and services. The principal determinants in selecting the program or service for each child shall be goals of the child's individualized education program for children with disabilities, group education program for the academically gifted or written education program for the pregnant. In providing services to a child with special educational needs, the first factor should be the degree to which the child will

profit from such an arrangement rather than administrative considerations. In selecting the least restrictive environment for the child, the local educational agency shall give consideration to any potentially harmful effect on the child and quality of service. The principal determinants of the number of children served in each program will be the age of the children, the nature and severity of their handicapping characteristics or advanced intellectual status, and the degree of intervention necessary to meet the individual needs. When serving children with special needs in regular classes, consideration should be given to the pupil-teacher ratio to allow for maximum benefits to regular and special students.

E. The following is a list which describes the continuum of programs and services available to school-age children with special needs.

(1) Regular Setting. Children who receive the majority of their education program in the regular setting include children with special needs who receive special education and related services outside the regular classroom for less than 21 percent of the school day. This may include children with disabilities placed in:

(a) regular class with special education/related services provided in a regular class,

(b) regular class with instruction within the regular class and with special education/related services provided outside regular classes; i.e., a resource room.

(2) Resource Setting. Children who receive special education in the resource setting include children with disabilities who receive special education and related services outside the regular classroom for at least 21 percent but no more than 60 percent of the school day. This may include children placed in:

(a) resource rooms with special education/related services provided within the resource room, or

(b) resource rooms with additional part-time special education in a regular class.

(3) Separate Setting. Children who receive special education in a separate setting include children who receive special education and related services outside the regular classroom for more than 60 percent of the school day. This does not include students who receive education programs in public or private separate day or residential facilities. This may include children placed in:

(a) self-contained special classes with part-time instruction in a regular class, or

(b) self-contained full-time special classes on a regular school campus.

(4) Public Separate School Facility. Children who receive special education in public separate day school facilities include children with disabilities receiving special education and related services for greater than 50 percent of the school day in separate facilities. This may include children and youth placed in:

(a) public day schools for students with disabilities (This includes those children who are day students at a facility such as the Governor Morehead School.), or

(b) public day schools for students with disabilities for a portion of the school day that is greater than 50 percent, and in regular school buildings for the remainder of the school day.

(5) Private Separate School Facility. Children who receive special education programs in private separate day school facilities include children with disabilities who receive special education and related services, at public expense, for greater than 50 percent of the school day in separate facilities. This may include children and youth placed in:

(a) private day schools for students with disabilities, or

(b) private day schools for students with disabilities for a portion of the school day

that is greater than 50 percent, and in regular school buildings for the remainder of the school day.

(6) Public/Residential Facility. Children who receive special education programs in public residential facilities include children with disabilities who receive special education and related services for a period of time greater than 50 percent of the school day. This may include children placed in:

(a) public residential schools for students with disabilities, or

(b) public residential schools for students with disabilities for a portion of the school day that is greater than 50 percent and in separate day schools or regular school buildings for the remainder of the school day.

(7) Private Residential Facility. Children who receive special education programs in private residential facilities, include children with disabilities who receive special education and related services, at public expense, for a period of time greater than 50 percent of the school day. This may include children placed in:

(a) private residential schools for students with disabilities, or

(b) private residential schools for students with disabilities for a portion of the school day that is greater than 50 percent and in separate day schools or regular school buildings for the remainder of the school day.

(8) Hospital/Homebound Setting. Children who receive special education in homebound or hospital placements include children with disabilities placed in and receiving special education in:

(a) hospital programs, including children who are served as:

(i) in-patients

(ii) out-patients

(iii) out-patients served in clinics;

(b) homebound programs.

Homebound placement shall be temporary with a goal in the IEP for returning the child to a less restrictive environment within the school year unless there is medical information which would require extended homebound instruction.

F. The regular school program traditionally does not serve preschool children; therefore, preschool children with disabilities will be located in a variety of settings, including the home, day care centers, private day care homes, Head Start, area mental health operated programs, private preschool programs, or other specialty programs. These settings have been selected at the preference of the parent or caregiver and represent the child's natural environment. The local education agency may offer special education and related services to children who are located in these environments, as well as in other environments determined appropriate by the local education agency.

The following is a description of programs and services available to preschool children with disabilities. This type of setting is based upon the presence or absence of typically developing children when the child with a disability receives special education and related services.

(1) Early Childhood Setting. Preschoolers with disabilities receive their special education and related services in an integrated educational programs designed primarily for children without disabilities. This setting may include, but is not limited to:

(a) public or private preschools,

(b) Head Start Centers,

(c) child care facilities, or
(d) other combinations of early childhood settings.

(2) Part-Time Early Childhood/Early Childhood Special Education Setting. Preschoolers with disabilities receive a portion of their special education and related services with children without disabilities and may receive another portion with children with disabilities or in a one-to-one, child-to-teacher situation.

(3) Early Childhood Special Education Setting. Preschoolers with disabilities receive their special education and related services only with other children with disabilities. The special education and related services are delivered totally in a non-integrated setting. Such a setting may include, but is not limited to:
(a) separate classes for children with disabilities,
(b) combinations of early childhood special education settings, or
(c) settings in which a child receives special education or related services on a one-to-one, child-to-teacher basis.

(4) Public Separate Setting. This setting includes public separate day schools for preschool children with disabilities. Special education and related services are delivered to children with disabilities in educational programs in public day schools that are specifically designed for children with disabilities.

(5) Private Separate Setting: This setting includes private separate day schools for preschool children with disabilities. Special education and related services are delivered to children with disabilities in educational programs in private day schools that are specifically designed for children with disabilities.

(6) Public Residential Setting. This setting is one in which preschoolers with disabilities reside in and receive their special education and related services in publicly operated residential schools.

(7) Private Residential Setting. This setting is one in which preschoolers with disabilities reside in and receive their special education and related services in privately operated residential schools.

(8) Home. This setting is one in which preschoolers with disabilities receive their special education and related services in the principal residence of the child's family or caregivers.

(9) Hospital Setting. This setting is one in which preschoolers with disabilities receive their special education and related services in hospital facilities on an in-patient or out-patient basis.

Instruction to children in these settings may be provided by direct instruction, consultation, or a combination of direct instruction and consultation. Direct instruction and/or consultation to children must occur a minimum of once per week for special education. Direct instruction and/or consultation for related services shall be based on the child's needs as documented in the individualized education program. When consultation is the only special education service provided to the child, the regular classroom teacher must be a licensed teacher or, if not, he/she must be under the supervision of a licensed teacher.

G. Speech-language and hearing services may appear at any level of the continuum and offer program or service alternatives. A continuum of program and service models for children with speech, language and hearing impairments includes a communication development program, a communication deviations program and a communication disorders program.

History Note: Statutory Authority G. S. 115-110; Eff. July 15, 1979; Amended Eff. July 11, 1991; December 7, 1989, September 28, 1981.

.1516 MAXIMUM CLASS SIZE: PUPIL-TEACHER RATIO

Local educational agencies must assure that all levels of the continuum of programs and services as defined in section .1515 (E) are available, considered and utilized for all categories of children with special needs; in addition, the maximum class size in the settings below shall not be exceeded. Deviations may be made only with the prior written approval of the Exceptional Children Division upon request by a local educational agency. Local educational agencies are encouraged to lower the maximum class sizes, if needed, to meet the needs of their particular students.

NOTE: Class size requirements and teacher-pupil ratios for preschool children with disabilities, are included in item B.

A. Class Size: Pupil-Teacher Ratio - School-Age

Total Class Load (TCL) for Middle and High school subject area teachers (e.g., Math, English) Can be based on Resource class size multiplied by five periods.

Category	Level of Continuum	Maximum Class Size Number of Assistants		
		0	1	2
Academically Gifted	Regular Class...Resource	150 TCL		
	Separate Class...(61% or more time with one Teacher)	26		
Behaviorally-Emotionally Handicapped	Regular Class	20 TCL		
	Resource Class	6	8 No more than 20 TCL	
	Separate Class		8	
Hearing Impaired	Regular Class	20 TCL		
	Resource Class	20 TC.		
	Separate Class...P-K-6		7	
	Separate Class...7-12		9	
	Separate Class...Severely Handicapped		4	
	Residential		5	
	Residential...Multihandicapped		4	
Educable Mentally Handicapped	Regular Class (Elementary)	35 TCL		
Autistic	Regular Class (Middle-Secondary)	60 TCL		
Deaf Blind	Resource Class	12 No More Than 35 TCL		16
Multihandicapped	Separate Class...P-12 (EMH)	12	16	18
Severely/Profoundly Handicapped	Separate Class...(TMH)		12	14
Trainable Mentally Handicapped	Separate Class...(AU, DB, SPH & MU)		6	8
Orthopedically Handicapped	Regular Class...Resource	15 TCL		
	Separate Class		12	
Specific Learning Disabled	Regular Class (Elementary)	35 TCL		
	Regular Class (Middle-Secondary)	50 TCL		
	Resource	10/35 TCL		
	Separate Class	10	16	
Speech-Language Impaired	Regular Class...Resource			
	Separate Class	6	12	
Visually Impaired	Regular Class...Resource	20 TCL		
	Resource Class	8 No More Than 20 TCL		
	Residential	8		
Multi-Categorical	Regular Class (Elementary)	35 TCL		
	Regular Class (Middle-Secondary)	50 TCL		
	Resource Class	10 No More Than 35 TCL	16	
	Separate Class (Maximum 4 B-EH)	8	12	

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B. Preschool Children with Disabilities

(1) early childhood, combined early childhood/special education or early childhood special education settings: Caseload requirements must be flexible enough to provide for appropriate services in direct accord with the children's diagnosed needs. Consideration should be given to types of severity of the children's problems; nature and level of services required by the children to allow them to progress at optimum learning rates in accomplishing specific objectives; and intellectual abilities and emotional behaviors of the children to be served. Settings that serve preschool children with disabilities should not exceed a ratio of 6 children with disabilities to 1 adult (teacher and/or assistant). For more severely involved children, such as autistic, additional assistants may be needed and/or a lower adult-child ratio may be necessary to serve children more appropriately.

(2) home program: caseload up to 15 children, 1 teacher.

(3) residential setting: up to 5 children, 1 teacher; 6 to 8 children, 1 teacher, 1 assistant; 9 to 12 children, 1 teacher, 2 assistants.

Services to preschool children with disabilities are often provided by itinerant teachers in Head Start, day care programs, etc. Although no minimum or maximum caseload is required, it must be flexible enough to provide for appropriate services as described in their individualized education programs.

History Note: Statutory Authority G. S. 115C-110;
Eff. October 1, 1978; G. S.115C-146.1 through 146.4;
Eff. July 1, 1991.
Amended Eff. July 11, 1991; December 7, 1989;
September 28, 1981, September 30, 1980; July 15, 1979.

.1517 DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

A. As used in this rule

(1) "Consent" means that:
(a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
(b) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and
(c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(2) "Evaluation" means procedures used in accordance with Section.1502 to determine whether a child has special needs and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used

with all children in a school, grade, or class.

B. The parents of a child with special needs shall be afforded, in accordance with the procedures in Section .1514, an opportunity to inspect, review and copy all the child's education records with respect to the identification, evaluation, and educational placement of the child, and the provisions of a free appropriate public education to the child.

C. An independent educational evaluation is available as follows:

(1) The parents of a child with special needs have the right under this paragraph to obtain an independent educational evaluation of the child, subject to subparagraphs (4) through (7) of this paragraph.

(2) Each local educational agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this rule:
   (a) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the local educational agency responsible for the education of the child in question.
   (b) "Public expense" means that the local educational agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with 34 CFR 300.301.

(4) Parent right to evaluation at public expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the local educational agency. However, the local educational agency may initiate a hearing under this rule to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(5) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:
   (a) must be considered by the local educational agency in any decision made with respect to the provision of a free appropriate public education to the child; and
   (b) may be presented as evidence at a hearing under this rule regarding that child.

(6) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(7) Agency criteria. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the local educational agency uses when it initiates an evaluation.

D. Prior notice; written consent.

(1) Notice. Written notice which meets the requirements of paragraph (E) of this rule must be given to the parents of a child with special needs a reasonable time before the local educational agency:

(a) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child; or

(b) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

For purposes of this paragraph, a suspension or expulsion of a child with special needs for a period of more than ten days during the school year for behavior caused by the child's special needs shall be deemed to be a change of educational placement.

(2) Consent.

(a) Parental consent must be obtained before:

(i) conducting a preplacement evaluation; and

(ii) initially placing a child with special needs in a program providing special education and related services.

(b) Consent may not be required as a condition of any other benefit to the parent or child.

(c) Consent is not required prior to reevaluation to determine if the child remains eligible for special education and related services, but prior notice is required before such evaluations.

(3) Procedures where parent refuses consent. When a parent refuses consent as required by part (a) of subparagraph (2) of this paragraph, the local educational agency may initiate an impartial due process hearing under paragraph (F) of this rule. If the hearing officer upholds the local educational agency, the local educational agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights of administrative appeal and judicial review.

E. Content of notice.

(1) The notice under paragraph (D) of this rule must include:

(a) a full explanation of all the procedural safeguards available to the parents under this rule which shall include impartial due process hearing rights (administrative review); surrogate rights; opportunity to examine records; independent educational evaluation; protection in evaluation procedures; least restrictive environment; and confidentiality;

(b) a description of the action proposed or refused by the local educational agency, explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(c) a description of each evaluation procedure, test, record or report the local educational agency uses as a basis for the proposal or refusal;

(d) a description of any other factors which are relevant to the agency's proposal or refusal;

(e) a statement advising the parent, guardian, or surrogate parent of the right to review the proposed decision;

(f) a statement offering the parent, guardian, or surrogate parent the opportunity for mediation; and

(g) an explanation of parental rights afforded by H.B. 364 (ratified in the 1987 session of the General Assembly and G.S. 150B-23 through 37. These statutes indicate to whom the parent or guardian should make the request for an administrative review (hearing) and the appropriate procedures to follow.

(2) The notice must be:

(a) written in language understandable to the general public; and

(b) provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(a) that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(b) that the parent understands the content of the notice; and

(c) that there is written evidence that the requirements of this subparagraph have been met.

(4) The local educational agency must inform the parent, guardian or surrogate parent of any free or low-cost legal and other relevant services available in the area if:

(a) the parent requests the information; or

(b) an administrative review is initiated under this rule.

(5) The local education agency shall document that the notice has been sent to and received by parent(s), guardian(s) or surrogate parent(s).

F. Mediation.

(1) Mediation of disputes or disagreements regarding the identification of children with special needs and the provision of special education for children with special needs prior to formal administrative review is encouraged.

(2) If a request for formal administrative review has not been filed, the superintendent, upon the request of a parent, guardian, or surrogate parent, shall meet, or designate an assistant or associate superintendent to meet with the parent, guardian, or surrogate.

(3) The meeting shall be informal and the General Assembly intends that the meeting shall be nonadversarial, as required by G.S. 150B-22.

G. Impartial Due Process Hearing.

(1) The parent, guardian, or surrogate parent may obtain review of proposed decisions on the following grounds:

(a) the child has not been identified and evaluated or has been incorrectly identified and evaluated as a child with special needs;
(b) the child's individualized education program is not appropriate to meet his needs or is not being implemented;
(c) the child's placement is not appropriate to meet his needs; or
(d) the child is otherwise being denied a free, appropriate public education.

(2) A local education agency may obtain review as provided by this section if a parent, guardian, or surrogate parent refuses to consent to the evaluation of the child for the purpose of determining whether the child is a child with special needs or refuses to consent for the initial placement of the child or for the provision of a free appropriate public education for the child or any other issues relating to Section G(1).

(3) Except as otherwise provided in this section, the administrative review shall be initiated and conducted in accordance with Article 3 of Chapter 150B of the General Statutes, the Administrative Procedures Act.

(4) Notwithstanding the provisions of G.S. 150B-23(a) and G.S. 150B-33(b)(9), the issues for review shall be limited to those set forth in G (1) above.

(5) When a parent or a local education agency requests a due process hearing, a petition for a contested case shall be filed in the Office of Administrative Hearings and that office shall send a copy to the Superintendent of the Department of Public Instruction in accordance with G.S. 150B-23.

(6) The Chief Administrative Law Judge shall appoint an administrative law judge to preside over the hearing as provided in G.S.150-32.

(7) The local education agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:
(a) the parent requests the information; or
(b) the parent or the agency initiates a hearing under this section.

H. Qualifications of Administrative Law Judges or Review Officers.

(1) A hearing may not be conducted:
(a) by a person who is an employee of a public agency which is involved in the education or care of the child (including employees or officials of the State Department of Public Instruction or the State Board of Education), or
(b) a person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
(c) by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(2) Each local education agency shall keep a list of the administrative law judges who preside at the hearings. The list must include a statement of the qualifications of each of those persons.

I. Hearing Rights.

(1) Any party to a hearing has the right to:

(a) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with special needs;

(b) present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(d) obtain a written or electronic verbatim record of the hearing. The written transcript is to be provided to the parent without charge;

(e) obtain written findings of fact and decisions.
(The state education agency shall transmit those findings and decisions, after deleting any personally identifiable information to the State advisory panel, Council on Educational Services for Exceptional Children.) The state education agency must also make the findings and decisions available to the general public after it has deleted any personally identifiable information.

(2) Parents involved in hearings must be given the right to:

(a) have the child who is the subject of the hearing present; and

(b) open the hearing to the public before or during the hearing upon written notice to the administrative law judge or the review officer if there is an additional hearing.

J. Final Decision and Appeal.

(1) Following the hearing, the administrative law judge shall serve the final decision. The administrative law judge shall give a copy of written findings and the decision to the parties and to the State Superintendent of Public Instruction.

(2) Any party aggrieved by the decision of the administrative law judge may appeal that decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the Superintendent of Public Instruction.

K. Administrative Review by Review Officer.

(1) When there is an appeal by either party of the decision of the administrative law judge, the State Superintendent of Public Instruction shall appoint an impartial review officer for the review.

(a) The review officer shall be selected from a pool of review officers who have been approved by the State Board of Education.

(b) The review officer shall be an educator or other professional who has a background in or knowledge about educating children with special needs.

(c) The review officer must meet the requirements of Section H (1) and be trained to conduct a hearing.

(d) The state education agency shall keep a list of approved review review officers and their qualifications and shall provide the list upon request.

(2) In conducting the administrative review the impartial review officer shall:
- (a) examine the entire hearing record;
- (b) ensure that the procedures at the hearing conducted by the administrative law judge were consistent with the requirements of due process;
- (c) seek new evidence, if it is determined that the evidence is material to the issue, is not merely cumulative, and could not reasonably have been presented at the contested case hearing. If a hearing is held to receive additional evidence, the rights in Section I apply;
- (d) afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- (e) make an independent decision on completion of the review; and
- (f) give a copy of written findings and the decision to the parties.
- (g) The decision made by the reviewing official is final, unless a party brings a civil action.

(3) All parties have the right to continue to be represented by counsel during the administrative appeal whether or not the hearing officer determines that a further hearing is necessary.

(4) If the review officer decides to hold a hearing to receive additional evidence, the the other rights in Section I also apply.

L. Timelines and Convenience of Hearings and State Reviews.

(1) Due Process Hearings
- (a) The Office of Administrative/Hearings shall ensure that not later than 45 days after the receipt of a request for a due process hearing;
  - (i) A final decision is reached in the hearing; and
  - (ii) A copy of the decision is mailed to each of the parties.
- (b) The administrative law judge may grant specific extensions of time beyond the periods set out in paragraph (1)(a) of this section at the request of either party.
- (c) Each hearing involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

(2) Appeal to State Superintendent of Public Instruction
- (a) The review officer appointed by the State Superintendent shall render and mail a final decision within 30 days of receipt of an appeal.
- (b) The review officer may grant specific extensions of time beyond the periods set out in paragraph (2)(a) of this section at the request of either party.
- (c) The review officer shall make written findings of fact and conclusions of law. This is the final decision unless an aggrieved party brings a civil action pursuant to Section N.
- (d) A copy of the decision shall be served upon each party and a copy shall be

furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitations for filing a civil action pursuant to Section N.

(e) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably to the parents and child involved.

M. Enforcing Decision

The State Board shall have the power to enforce the final decision of the administrative law judge, if not appealed pursuant to Section K, or the final decision of the review officer, by ordering the local education agency:

(1) to provide a child with appropriate education;

(2) to place a child in a private school that is approved to provide special education and that can provide the child an appropriate education; or

(3) to reimburse parents for reasonable private school placement costs in accordance with the provisions of G.S. 115C-115 when it is determined that the local educational agency did not offer or provide the child with an appropriate education and the private school in which the parent, guardian, or surrogate parent placed the child was an approved school and did provide the child an appropriate education.

N. Right to File Civil Action. Any party aggrieved by the decision of the review officer may file a petition for judicial review under Chapter 150 B in state court within 30 days after receipt of notice of the decision or file an action in federal court as provided in 20 U.S.C. Section 1415.

O. Child's Status During Proceedings.

(1) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the local education agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(2) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in a public school until the completion of all the proceedings.

P. Right to File a Formal Written Complaint. Any individual, organization or public agency may file a signed written complaint about the provision of a free appropriate public education of a child with special needs. A complaint is an official allegation that a special education law or procedure is not being carried out by a local education agency or by the Department of Public Instruction, pursuant to the Individuals with Disabilities Education Act (PL 101-476) and Article 9 of Chapter 115C of the North Carolina General Statutes.

(1) Upon receipt of a complaint, Staff of the Exceptional Children Division will conduct an investigation of the complaint using whatever techniques the Director deems appropriate, including on-site investigation.

(2) On-site investigation will be considered when:
  (a) documentation is insufficient to determine a finding;
  (b) observation of physical facilities is necessary to determine a finding;
  (c) an audit of original records is necessary to determine a finding; or
  (d) the presence of investigators on site may reduce any undue influence on the process or the outcome of the investigation by the media or other outside factors.

(3) The complainant may submit, either orally or in writing, additional information about the allegations any time during the 60 day investigation period.

(4) A written letter of findings based on findings of fact and conclusions of law will be issued within 60 days of the filing of the complaint.

(5) A corrective action plan will be required when allegations of non-compliance are substantiated through the complaint investigation process.

(6) Failure to develop or submit an appropriate corrective action plan may result in the withholding of approval of the local education agency's Title VI, Part B Local Plan.

(7) If either party to a complaint involving a student with a disability disagrees with the findings of the investigation, a request for a review of the findings by the Secretary of the United States Department of Education may be filed.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; 115C-116;
Eff. June 21, 1989; July 8, 1988; July 15, 1979;
Amended Eff. July 11, 1991; December 7, 1989;
September 28, 1981.

.1518 SELECTION OF SURROGATE PARENTS

A. Each public agency shall appoint a surrogate when no parent can be identified; the public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or the child is a ward of the State under the laws of the State.

B. The State Superintendent of Public Instruction, shall fulfill any obligations to appoint and approve persons as surrogate parents by ensuring that local educational agencies have on file a list of trained persons who are available for appointment as surrogate parents when one is required. Further, the local education agency shall provide assurances that appropriate training has been provided prior to appointment as a surrogate parent. Local educational agencies, the Council on Educational Services for Exceptional Children and the Governor's Advocacy Council for Persons with Disabilities may make recommendations to the Superintendent, the Secretaries, and local educational agencies of potentially eligible people to act as surrogate parents. Any persons recommended to the State Superintendent shall be referred to the local education agency for training and addition to the list maintained at the local level. The Superintendent of the local educational agency shall select surrogate parents from the approved list when a student in the local education agency requires a surrogate parent.

C. Surrogate parents shall have no interest that conflicts with the interests of the child represented and shall possess knowledge and skills that ensure adequate representation of the child. A surrogate parent

must not be an employee of the State or any local government, educational or human resources agency responsible for or involved in the education or care of the child; however, a person is not to be considered an employee of the State or other agency solely because he or she is paid by the agency to serve as a surrogate parent, where volunteers are unavailable. In no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The State Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent.

D. The following two factors may also be considered in the selection of a surrogate parent, but are not mandatory:

(1) relationship to the child; and

(2) whether the prospective surrogate parent is of the same race as the child.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; 115C-116;
Eff. June 21, 1989; July 8, 1988; July 15, 1979;
Amended Eff. July 11, 1991; December 7, 1989;
September 28, 1981.

.1519 PROCEDURES FOR DETERMINING AND ASSIGNING SURROGATE PARENTS

A. The Secretary of the Department of Human Resources and the Secretary of the Department of Correction shall appoint and approve appropriately trained persons to act as surrogate parents for students who are enrolled in special education programs operated by the Department of Human Resources and the Department of Corrections and who require a surrogate parent.

B. The Secretaries of the Departments of Human Resources and Correction may assign a surrogate parent for persons seventeen years old or younger committed to the Department when, after appropriate notice to parents or guardians as provided for in Section .1517, there has been no response or acknowledgement by the parent within 20 calendar days.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; 115C-116;
Eff. July 15, 1979.
Amended Eff. July 11, 1991;
September 28, 1981.

.1520 RESPONSIBILITIES OF SURROGATE PARENTS

The surrogate parent shall represent the child in all matters relating to the identification, evaluation and educational placement of the child and the provision of a free appropriate public education to the child.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; 115C-116;
Eff. July 15, 1979.

.1521 AGENCIES RESPONSIBLE FOR ADMINISTRATION OF PROCEDURES

Implementation of the procedures is the responsibility of the local educational agencies. All agencies not associated with city and county school administrative units, Department of Human Resources, Developmental Evaluation Centers of the Department of Environment, Health and Natural Resources or the Department of Correction must also meet the standards described in this Section if they provide education services to children with special needs. Local educational agencies shall ensure that the standards are met prior to contracting for services from such programs.

History Note: Statutory Authority G. S. 115C-106(b); 115C-110
Eff. July 15, 1979.

.1522 FREE AND APPROPRIATE SERVICES

It is declared the policy of the State Board of Education in reaffirming action of the General Assembly in An Act to Provide for a System of Educational Opportunities for All Children Requiring Special Education, "to provide a free appropriate publicly supported education to every child with a disability ages three through twenty and academically gifted ages 5 through 20." The State Board reaffirms the finding of the General Assembly "that all children with special needs are capable of benefitting from appropriate programs of special education and training and that they have the ability to be educated and trained and to learn and develop." No children with disabilities ages three through twenty or academically gifted children ages 5-20 shall be denied a free appropriate public education or be prevented from attending the schools of the local educational agency from which he/she receives services or in which he/she or his/her parents or (guardians) reside or from attending a program in a city or county school administrative unit because he/she is a child with special needs. A student who becomes twenty-one years of age during the school year may continue to receive a free appropriate public education during that school year. The State Board of Education supports special education and related services for children with disabilities on a permissive basis birth through age twenty-one.

History Note: Statutory Authority G. S. 115C-106(b); 115C-107; 115C-110;
Eff. July 15, 1979;
Amended Eff. July 11, 1991; July 1, 1986;
November 1, 1984.

.1523 DISCIPLINARY SUSPENSIONS

A. In the event that a child with a disability exhibits behavior which, if the child were not a child with a disability, could result in the suspension or expulsion of the child from school for more than ten days during the school year, the LEA shall require a multidisciplinary team promptly to review the evaluations already completed for the child and conduct any additional evaluations necessary to determine if the behavior is caused by the child's special needs including (1) whether the child is presently receiving appropriate education, and (2) whether medication is needed or present medication is appropriate. If the evaluation establishes no such relationship, the LEA may initiate its normal disciplinary procedures; provided that the student with a disability must continue to receive a free appropriate public education. If the student with a disability is suspended or expelled, the LEA must provide a free appropriate public education in an alternative setting such as an alternative school or at home. If the evaluation does establish such a relationship, the LEA may not initiate its normal disciplinary procedures.

B. Nothing in this rule shall prohibit an LEA from seeking a court order under IDEA to to remove a student with a disability from school if maintaining the student in his current placement is substantially likely to result in injury to himself or to others.

C. In an emergency situation, the child may be immediately suspended for a period not to exceed ten days. As soon as possible after the suspension has begun, and in no case beyond the end of the ten day maximum period, except under extraordinary circumstances, the multidisciplinary team shall conduct the evaluation described above in paragraph (a). To constitute an emergency situation, there must be a continuing threat to the child or to others due to the child's behavior.

D. In all actions involving suspension of a child with a disability whose behavior is determined to be caused by his/her handicapping condition or lack of proper medication, the parties have available all due process rights of G.S. 115C-116 and 20 USC 1415.

History Note: Statutory Authority G. S. 115C-112;
Eff. October 1, 1978;
Amended Eff. February 1, 1996; Amended Eff. November 1, 1984; January 1, 1983; September 28, 1981; July 15, 1979.

.1524 ANNUAL CENSUS AND LISTING OF STUDENTS

A. Each local educational agency shall conduct an annual census of children with special needs, subdivided for "identified" and "suspected" children with special needs, and include their age, the nature of their exceptionality, their county and city of residence, their school administrative unit residence, whether they are being provided special educational or related services and if so by which department or agency. In taking a census, the city or county school administrative units shall collect the census information with the cooperation, participation, and assistance of all other State and local governmental departments and agencies providing or required to provide special education services to children with special needs. The census shall be of children with special needs ages birth through twenty-one inclusive.

B. Each city or county school administrative unit shall make and keep current a list of all children evaluated and diagnosed who are found to have special needs and who reside in that city or county. This shall include all children who are receiving home, hospital, institutional, or other special education services, including those being educated within the regular classroom setting or in other special education programs including programs under the Department of Human Resources and Department of Correction.

C. When a newly identified child with special needs has been diagnosed or evaluated by personnel under the Department of Human Resources or the Developmental Evaluation Centers of the Department of Environment, Health and Natural Resources, appropriate personnel from the Department shall contact the city or county school administrative unit of the child's residence and inform them in writing of the evaluation and results. Exemptions from the Department of Human Resources or the Department of Environment, Health and Natural Resources will be considered by the Department of Public Instruction upon written request by the Secretary of the Department of Human Resources or the Secretary of the Department of Environment, Health and Natural Resources.

History Note: Statutory Authority G. S. 115C-110;
Eff. July 15, 1979.

.1525 JOINT PLANNING

Local educational agencies should work together in planning and implementing programs and services for children with special needs. This includes city and county school administrative units and the programs and agencies of the Department of Human Resources, Department of Environment, Health and Natural Resources and the Department of Correction.

History Note: Statutory Authority G. S. 115C-110; 115C-113; Eff. July 15, 1979.

.1526 PRIVATE SCHOOLS - STANDARDS AND STATE BOARD APPROVAL

A. Children with special needs in private schools and facilities shall be provided special education and related services in conformance with the individualized education program, at no cost to their parent(s) or guardian(s), provided such children have been placed in or referred to such schools or facilities by an appropriate local educational agency. Local educational agencies shall determine whether the private schools and facilities meet the standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies. Local school administrative units may place children with special needs out-of-LEA only in approved private programs. The State and local educational agencies shall be excused from payment of the costs of special education and related services in a private school if a child is placed in that school by his parent(s) or guardian(s).

B. State departments, agencies and divisions and local educational agencies furnishing special education and related services to children with special needs may contract with private special education facilities or service providers to furnish such services as the public providers are unable to furnish. A copy of all contracts between school administrative units and private schools shall be filed with the Exceptional Children Division.

C. Parents who request a due process hearing concerning the appropriateness of a local educational agency's program for a pupil enrolled in a private school must present the pupil for observation and evaluation, if the local educational agency has not observed and evaluated the child within the last two years. If the local educational agency consents, or if written medical advice states that the pupil cannot be moved from his/her present placement for observation, then the parents may present evaluations and private school records concerning the pupil to the local educational agency instead of making him/her physically available. Failure of the parent to comply with the requirement of this subsection shall constitute a waiver of the parent's right to any hearing pursuant to the provisions of G. S. 115C-116.

History Note: Statutory Authority G. S. 115C-115;
Eff. October 1, 1978;
Amended Eff. November 1, 1984; September 30, 1980;
July 15, 1979.

.1527 RESPONSIBILITIES OF THE EXCEPTIONAL CHILDREN DIVISION

A. The services of the Exceptional Children Division are available to all local educational agencies and parents/consumers.

B. The Division provides consultative services to local educational agencies in planning, establishing, and maintaining programs/services for the instruction of children with special needs in the least restrictive environment.

C. The Division assists local educational agencies in developing and implementing an equal educational opportunities program. The Division also approves and monitors the equal educational opportunities plan.

D. The Division is responsible for developing a plan for a statewide census, collecting information and reporting to the State Board of Education. All local educational agencies must participate in the census.

E. The Division provides consultative services in developing and implementing the individualized education program for children with disabilities, group education program for the academically gifted or written educational program for the pregnant to local educational agencies. The Division also monitors these programs.

F. The Division cooperates with other divisions in the Department of Public Instruction and other departments, agencies, and institutions of higher education to foster a collaborative effort on behalf of all children with special needs.

G. The Division disseminates information needed by parents, lay persons, legislators, organizations, and agencies upon request to keep them properly informed and to assist their understanding of programs for children with special needs.

H. The Division provides consultative services and technical assistance in the areas of curriculum development, instructional materials, adaptive devices, and use of technology for children with special needs.

I. The Division provides and supports staff development activities to improve and upgrade competencies of regular and special class teachers, administrators and support personnel as they impact on children with special needs.

J. The Division coordinates and administers the activities of the following federal programs:

(1) Individuals with Disabilities Education Act, P.L. 101-476, which amends the following;
   (a) Education of the Handicapped Act, Title VI, Part C;
   (b) Education of the Handicapped Act, Part B, P.L. 91-230 as amended by P.L. 94-142 (Federal Programs);
   (c) Education of the Handicapped Act, Part B, P.L. 94-142 as amended by P.L. 99-457 (Preschool Grant Program);(d)Education of the Handicapped Act, Part, D, P.L. 91-230 as amended by P.L. 95-49 (Professional Improvement of Teachers);

(2) Elementary and Secondary Education Act, Title I, P.L. 89-10 as amended by P. L. 89-313 and P.L. 100-297.

K. The Division assists in developing, approving and monitoring special projects under Education of the Handicapped Act, Part B, P.L. 94-230 as amended by P.L. 94-142 and P.L. 99-457 and by Elementary and Secondary Education Act, Title I, P.L. 89-10 as amended by P.L. 89-313 for all local educational agencies eligible for these funds and P.L. 93-380.

History Note: Statutory Authority G.S. 115C-110; Eff. July 15, 1979

.1528 QUALIFICATIONS AND LICENSURE OF EDUCATIONAL PERSONNEL

A. Personnel in City and County School Administrative Units.

(1) Teachers of children with special needs shall hold as a minimum a regular class "A" teaching license.

(2) All teachers of children with special needs regardless of sources of funds must meet "in-field" teacher license requirements. This means that teachers of the academically gifted must be licensed in content areas in which they teach. Teachers of school-age students with disabilities must hold licensure for each category of students who comprise thirty or more percent of each special class they teach. Excluded from this requirement are regular teachers with heterogeneous classes which may include one or more children with special needs and teachers of preschool children with disabilities who are required to hold preschool licensure or Birth-K licensure. Personnel employed to provide services to exceptional children on a provisional license must work at a rate of six semester hours each year to be employed in these positions.

(3) Speech-language specialists shall be licensed at the master's degree level. Speech-language specialists who were certified by the Department of Public Instruction prior to 1984 must meet the highest standard, which is a master's degree in speech-language pathology, by the year 2005. When an LEA contracts for speech-language services, the contractor must hold a license from the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.

(4) Teacher assistants shall have training which meets the standards of the State Board of Education.

(5) Psychologists who are employed by the school administrative units shall be licensed by the State Department of Public Instruction. All school psychologists must meet Level II licensure requirements to function independently. Psychologists in private practice contracted by the local school administrative units shall be licensed.

(6) Individuals designated as Directors, Exceptional Children Programs, shall hold Master's level licensure in special education, administration, or supervision. Individuals holding Master's level licensure in special education or a related area, but not licensure in administration and/or supervision, shall complete nine semester hours of course work in supervision and/or administration. Individuals holding Master's level licensure in administration and/or supervision, but not Master's level licensure in special education or a related area, shall complete nine semester hours of graduate level course work in special education. Provisional licenses may be granted to persons working on their Director's license.

(7) Occupational therapists shall have graduated from an accredited program of occupational therapy. They shall be licensed by the State of North Carolina as occupational therapists.

(8) Physical therapists shall have graduated from an accredited program of physical therapy. They must be licensed by the State of North Carolina as physical therapists.

B. Personnel in Department of Human Resources and Department of Correction.

(1) All teachers employed by the Department of Human Resources and the Department of Correction to provide special educational services to children with disabilities , ages 3-21, and academically gifted students ages 5-21 shall follow the same regulations that apply to public school teachers.

(2) In the Department of Human Resources, speech-language specialists employed or contracted with shall have the appropriate license in order to provide services for communicatively impaired children and youth. Speech-language specialists employed by schools for the deaf or blind must hold a valid license in speech-language pathology issued by the Department of Public Instruction. When a school for the deaf or blind contracts for speech-language pathology services, the speech-language specialist must be licensed by the North Carolina Board of Examiners for Speech and Language Pathologists. Speech-language specialists working in other Department of Human Resources programs must be licensed by the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.

(3) In the Department of Correction, speech and language specialists must be licensed by the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.

(4) Teacher assistants shall have training which meets the standards of the State Board of Education.

(5) Psychologists shall either be licensed by the State Department of Public Instruction or licensed under the North Carolina Psychological Licensing Act.

(6) Occupational therapists shall have graduated from an accredited program of occupational therapy. They shall be licensed by the State of North Carolina as occupational therapists.

(7) Physical therapists shall have graduated from an accredited program of physical therapy. They shall be licensed by the State of North Carolina as physical therapists.

C. Personnel in Private Schools.

(1) All teachers employed in private schools to provide educational services to children with disabilities ages 3-21 and academically gifted ages 5-21 shall follow the same regulations that apply to public school teachers.

(2) Speech-language specialists must be licensed by the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.

(3) Teacher assistants shall have training which meets the standards of the State Board of Education.

(4) Psychologists shall either be licensed by the State Department of Public Instruction or licensed under the North Carolina Psychological Licensing Act.

(5) Occupational therapists shall have graduated from an accredited program of occupational therapy. They shall be licensed by the State of North Carolina as occupational therapists.

(6) Physical therapists shall have graduated from an accredited program of physical therapy. They shall be licensed by the State of North Carolina as physical therapists.

History Note: Statutory Authority G. S. 115C-110;
Eff. October 1, 1978;
Amended Eff. July 11, 1991; November 1, 1984;
September 28, 1981; September 30, 1980; July 15, 1979.

.1529 CATEGORICAL EXCEPTIONAL CHILDREN FUNDS FOR LOCAL EDUCATION AGENCIES

A. In the administration of these programs, the State Superintendent, the Associate State Superintendent for Financial Services and the State Board of Education shall deal solely with city and county superintendents and their local boards of education.

B. It is the policy of the State Board of Education that school-age exceptional children be counted in the average daily membership used to compute all state ADM allocations. Central office and school-based costs of administration, clerical support, instruction (for mainstreamed children), instructional support services, plant operations, textbooks, supplies and materials, and other general costs are expected to be funded from "regular allotments" intended for the benefit of all children. In addition, to the extent that self-contained exceptional children earn teaching positions in the regular allotment, it is the intent of the State Board of Education that these positions be used for the benefit of exceptional children. The state categorical funds allocated to serve exceptional children are intended to provide the additional costs of these programs beyond the regular program costs described in paragraph (b) of this Rule.

C. Eligibility and Age of Children with Special Needs.

(1) All children with disabilities ages 3 through 20 and academically gifted children 5-20 shall be provided a free and appropriate education.

(2) Exceptional children funds may be used for children with disabilities on a permissive basis birth through age 2 and for all children with special needs age 21.

(3) Evaluations of exceptional children for placement or for special services shall be performed by qualified personnel and in accordance with the placement procedures outlined in "Procedures Governing Programs and Services for Children with Special Needs."

D. Counting Procedures.

(1) Eligible headcounts shall include only those pupils identified according to State Board of Education criteria and having an approved individualized education program for children with disabilities, group education program for the academically gifted or written education program for the pregnant on file as of the reporting date.

(2) December 1 - Individuals with Disabilities Education Act (IDEA), P.L. 101-476 headcount report. The December 1 headcount is used to generate federal funds for children with disabilities ages 3-21 under the Individuals with Disabilities Act, P.L. 91-230, as amended by P.L. 94-142, P.L. 99-457, and P.L. 101-476. Included in this headcount are preschool children with disabilities, ages 3-5, who generate grant funds for preschool children with disabilities. Although academically gifted and pregnant school girls are reported for census purposes in the collection of December 1 data, funding for academically gifted and pregnant school girls is made based on the April 1 headcount only. (State funding is based on a combined count of all categories for children ages 5-20 in the December headcounts and adjusted in the April 1 headcount.) Preschool handicapped children with disabilities are included in the April 1 headcount for funding purposes. State funding for preschool children with disabilities is determined by the April 1 headcount, plus a base funding amount.

(3) To be eligible for counting on December 1 under Individuals with Disabilities Education Act, Part B, a child must:

(a) be enrolled in a special education program in a school or program which is operated/supported by a public agency which meets State Board of Education "Procedures Governing Programs and Services for Children with Special Needs";

(b) be receiving special education (free appropriate public education) and related services (when appropriate) on December 1;

(c) be properly identified as a child with special needs and have been placed in a class/program by the administrative placement committee or preschool transition/placement committee; have attained the third birthday and be no older than age 21;

(d) have an individualized education program for children with disabilities, a group education program for the academically gifted, or an education program for the pregnant.

E. Counting of Children with Special Needs Who Are Placed in a Public or Private School Facility.

(1) The local educational agency of legal residence is eligible to count the child in special education headcounts only if the local educational agency provides special education and related service either directly or contractually.
Exception: When a preschool child with a disability is enrolled in Head Start and Head Start is providing special education and related services by qualified personnel, the local education agency of legal residence may offer rights and count the child in the December 1 -P.L. 94-142 Handicapped headcount.

(2) When a child with special needs is placed to receive his/her special education in a public or private school or facility other than the one in which he/she maintains legal residence, the local educational agency of legal residence for the child shall count the child in the December and April special education headcounts but not in average daily membership.

(3) When a child is placed by the local educational agency of legal residence in another local education agency, the serving local education agency shall count the child in average daily membership but not in the December and April special education headcounts.

(4) When a child is in residence in a group home, foster home or similar facility, the local school administrative unit where the group home, foster home or similar facility is located shall count the child in the December and April special education headcounts and in average daily membership.

(5) When a child has been certified as Willie M. the local educational agency of legal residence for the child shall count the child in the December and April special education headcounts and in average daily membership:

(a) when the certified Willie M. child is served by another public school, the local education agency of legal residence shall count the child in the December and April special education headcounts. The serving local education agency shall count the child in average daily membership;

(b) when the child is served by a non-public school facility (e.g. mental health center), the local education agency of legal residence for the child shall not count the child in average daily membership.

(6) When a school-aged child is placed in a developmental day program, the local education agency of legal residence shall count the child in the December and April special education headcounts but shall not count the child in average daily membership. When a preschool child is placed in a developmental day program, the local education agency of legal residence shall count the child in the December special education headcount only.

(7) If the local education agency operates a developmental day program, the child shall be counted in the December special education head-counts for preschool and school-aged children; in the April special education headcount for school-aged children; and in average daily membership for school-aged children.

F. Contractual Agreements for Cooperative Programs in a Public or Private School or Facility

(1) The local educational agency has the ultimate responsibility for special education of children with disabilities who reside within the school district and whom the local educational agency serves either directly or contractually.

(2) When the local board of education places the child in another local educational agency or public or private school or facility, the local educational agency of legal residence of the child shall enter into a contractual agreement with the local educational agency or public or private school or facility.

(a) the contractual agreement shall specify the special education service(s) to be provided and the duration of that service during the school year;

(b) all contracts shall be negotiated prior to or at the beginning of each school year; and

(c) contracts shall be written for all such children whether or not any additional financial assistance is required for the child.

(3) When a local board of education releases the child to another local educational agency, the accepting agency has the responsibility for the special education of the child for that school year.

G. Allocation of State Exceptional Children Funds for School-Aged Children

(1) Allocations shall be made on a headcount basis and will be "in addition to" or "add-on" allocations to the average daily membership base allocation for all children.

(2) Add-on allocations for exceptional children will be determined by the State Board of Education.

(3) State funds will be allotted based on the annual April 1 headcount of children with disabilities, academically gifted and pregnant students ages 5 through 20.

(4) Allotments for children with disabilities are calculated based on the lesser of actual children with disabilities or 12.5 percent of the best three of the first four months of average daily membership of the prior year by the local school administrative unit to determine the total number of children with disabilities funded.

(5) Allotments for academically gifted children are calculated based on the lesser of actual academically gifted children or 3.9 percent of the best three of the first four months of average daily membership of the prior year by the local school administrative unit.

(6) The total headcount of eligible children with disabilities and academically gifted children are added together to determine the total number of exceptional children for funding.

H. Allocation of State Funds for the Preschool Children with Disabilities Program

State preschool children with disabilities program funds will be distributed according to the following formula:

(a) each local education agency will receive a base funding amount; and
(b) the remainder of the funds will be distributed to each local education agency based on the April 1 Headcount.

I. Allocation of Federal Children with Disabilities Funds. Allocation of federal funds to each local education agency shall be based on the December 1 actual eligible headcount of ages 3 through 21, for Individuals with Disabilities Education Act, without caps and excluding the academically gifted and the pregnant.

J. State and Federal Funds.

(1) A separate per pupil average statewide allocation from state and federal funds will be determined based on the total eligible headcounts for each.

(2) Total state and federal allocations for the shall not exceed 100% of the regular pupil per capita state allocation for the current year based on the total eligible number without regard to categorical handicapping areas.

K. Utilization of State Exceptional Children Funds.

(1) Exceptional children funds may be used for the following:
(a) to employ full or part-time directors of exceptional children programs to supervise programs for children with special needs. Funds for this

purpose will be transferred to the Central Office Allotment code. Persons employed in the position of Director, Exceptional Children Programs may be paid on a supervisor's salary schedule if they meet the requirements of the State Board of Education. The salary will be prorated based on the percentage of time assigned to supervision. Persons who do not qualify for payment on a supervisor's salary schedule will be paid on the appropriate teacher salary schedule. The following rule will be followed in approving funds to support a full- or part-time director of exceptional children programs :

Average Daily Membership	Positions		
0 - 23,999	1.0	24,000 - above	2.0

Local education agencies that do not have an administrator for the academically gifted may use funds for an additional .5 position to provide leadership for the academically gifted program;

(b) to employ a half-time coordinator or to pay up to a half-time supervisor or director on a supervisor's salary schedule if that person meets the requirements of the State Board of Education for programs for preschool children with disabilities;

(c) to provide clerical assistance using the rule listed in (K) (1) (a) of this rule;

(d) to employ teachers, speech-language and hearing specialists who shall be used exclusively to provide special education and/or related services to children with special needs in one or more of the following categories: autistic, deaf-blind, academically gifted, hearing impaired, mentally handicapped, multihandicapped, orthopedically impaired, other health impaired, behaviorally-emotionally handicapped, specific learning disabled, speech-language impaired, traumatic brain injured, visually impaired, preschool delayed/atypical, and pregnant. Adapted physical education teachers may be employed as long as they work exclusively with children with special needs. Teachers in bona fide team teaching situations are exempt from these requirements. Bona fide team teaching is instruction provided in a regular class-room that involves a general education teacher and an exceptional child teacher who are jointly responsible for planning, instructing, and evaluating a given group of students at any instructional level or in an a selected subject matter or combination of subject matter areas.

(e) to provide supportive personnel limited to psychologists, audiologists, teacher assistants, transportation safety assistants, adaptive physical education specialists, braillists, case managers, data managers, diagnostic-prescriptive specialists, interpreters for the deaf, occupational therapists, occupational therapist assistants, orientation and mobility specialists, parent counselors-trainers, physical therapists, physical therapist assistants, therapeutic recreation specialists, school health assistants, speech-language specialists, transition coordinators, and rehabilitation counselors. Other specific supportive personnel necessary to support programs and related services for children with special needs must have written approval from the Exceptional Children Division prior to employment;

(f) to provide contracted services limited to medical evaluations, related services, educational services including educational services in sheltered workshops, developmental day centers, and community residential centers;

(g) to purchase equipment including microcomputers for identified exceptional children. Equipment purchased from these funds must be used for exceptional children programs and administrative support for exceptional children support;

(h) to conduct annual census activities;

(i) to extend the employment period for school personnel employed to provide services for identified special needs students;

(j) to provide travel for itinerant teachers and related services personnel employed from Exceptional Children funds;

(k) to provide staff development for special education personnel to support the following:

(i) to grant certification endorsement to teachers of children with special needs;

(ii) to improve competencies, knowledge, and skills of certified teachers and support personnel who work with children with special needs; and

(iii) to provide competencies for teachers moving into new roles (program areas serving children with special needs);

(l) to provide staff development for parents of children with special needs;

(m) to provide staff development activities that are designed to achieve specific training objectives.

(n) to develop and conduct in-service training for regular educators in developing techniques and strategies for working with exceptional children in the regular classroom. Standards and regulations adopted by the State Board must be followed;

(o) to provide services for a child placed in a program not operated by the local board of education. The program must:

(i) offer an instructional program which will meet the special educational needs of the child; and

(ii) be approved as a program for children with special needs for the school year in question by the appropriate public agency in the state where the school is located.

(p) to provide services to children who are categorized as special needs children in a hospital or home program.

(q) to purchase minibuses for programs for preschool children with disabilities. (Prior written approval must be secured from the Exceptional Children Division.)

All contracts must meet the requirements of state and federal regulations.

(2) Exceptional children funds may not be used for the following:

(a) construction or renovation;

(b) to supplant locally funded programs and other state funds for materials and service positions;

(c) to supplant existing programs and services for children with special needs;

(d) local travel of directors;

(e) student travel to and from school with the exception of preschool children with disabilities;

(f) to pay supplements;
(g) to provide medical services;
(h) to provide custodial services or day care;
(i) to serve students who exit from special education programs; or
(j) to provide services to non-exceptional children.

L. Set-Aside Funds for Children Ages 3-20. The State Board of Education shall establish set-aside funds for special allocations prior to the determination of per pupil allocations with the maximum amount per set-aside to be justified and approved annually by the Board and reported to local education agencies. The Continuation Budget will contain a statement that gives the amount of set-aside funds approved by the State Board of Education.

(1) Out-Of-District Placements. The State Board of Education (or its designee) may approve the use of the reserve fund toward the payment of the excess cost of the placement of a child in a program not operated by the local board of education within funds available and subject to the following conditions:

(a) State Board of Education review reveals that the local education agency has approved alternative placement and the education agency finds it is necessary for the child to be placed in a program not operated by the local board of education in order to receive an educational program or service which will appropriately meet the child's special educational needs;

(b) the local education agency must fund an amount equal to the sum of the following per pupil allocations:

(i) the state's regular per pupil allocation for school-aged children;

(ii) the state's add-on per pupil allocation for exceptional children; plus

(iii) the federal per pupil allocation for exceptional children.

If the sum of those per pupil allocations does not cover the cost of the alternative placement, then the reserve fund may be approved, but in no case will the reserve fund pay more than fifty percent of the total cost of the alternative placement. Any cost then remaining must be assumed by the local education agency, using any local, state or federal funds approvable for such expenditure. Financial Services, State Department of Public Instruction, shall reimburse the local board of education for any reserve funds approved by the State Board of Education.

(c) Funds must be used only to provide special education and related services costs; residential costs; and extended school year when it has been determined by the IEP committee that extended year is required as part of the IEP. Funds must not be used for medical services, custodial, or day care.

(d) When a private residential placement has been determined to be the most appropriate placement for a child with a disability, all in-state residential programs should be the first consideration of placement. The local education agency should exhaust all possible in-state residential placements before placing a child out-of-state. All children placed in alternative school settings are entitled to the same rights and procedural safeguards as provided to those children whose individualized education programs are implemented in the local education agency.

(e) Any application for a special reserve fund allocation must be submitted prior to enrolling the child in the program.

(f) Each out-of-district placement must be reviewed annually (Continued placement must be based on the least restrictive educational placement).

(g) All withdrawals from out-of-district placements must be reported no later than 10 days after the withdrawal has occurred. The withdrawal notification must include the child's name, date of birth, disabling condition, and date of withdrawal. Additional children cannot be placed in programs of children that have withdrawn from enrollment. A complete application for placement must be submitted to Exceptional Children Division.

(2) Developmental Day Centers

(a) State categorically appropriated funds will be allocated to local education agencies at a per month per child rate determined annually by the Exceptional Children Division and Financial and Personnel Services. Special developmental day center funds are based on the actual months of service up to 180 school days and shall provide for educational services, including personnel, supplies, materials and educational equipment.

(b) Local education agencies whose developmental day center expenditures per child exceed the rate approved by the State Board may provide for the additional cost from other available funds.

(c) Once a child is transferred from the developmental day center and is to be served in the local education agency by agreement between the two governing bodies, the local education agency will then be eligible for an allocation at a per month per child rate established by the Exceptional Children Division under two conditions:

(i) a school age child (5-21) that was placed in a developmental day center and is now being served by the LEA. These funds are for the initial year of the transfer only. This provision is not for disabled preschool children placed in developmental day centers for preschool disability services who are now entering the LEA at age five for kindergarten; and

(ii) local education agencies that have developmental day programs that have closed and there are no other developmental day programs available. The LEA is entitled only to the amount of funding received the previous year . The allocation is for preschool and school age children with disabilities served in the center that closed.

(d) Children served in developmental day centers may be counted for federal funds.

(e) Developmental day center headcounts, external to local education agencies, are not included in the projected regular average daily membership.

(f) If the decision is to place the child in the developmental day center(s), the local education agency must submit the following information to the Exceptional Children Division:

(i) name of center;
(ii) number of children;
(iii) name and date of birth of each child;
(iv) type of handicapping condition of each child;

(v) rate per month per child (including a breakdown of center's educational costs per month for teachers' salaries, fringe benefits, support services such as occupational therapists, physical therapists, speech, etc.);

(vi) copy of contract/agreement with center;

(vii) all required information (i-vi) must be submitted to Director, Exceptional Children Division, for review and approval. Following review and approval by the Exceptional Children Division, Financial Services will be notified to allocate funds to the requesting local education agency.

(g) Personnel employed by local boards of education and/or independently operated developmental day centers may be employed for ten months.

(h) These funds are for children ages three through twenty to provide special education and related services for no more than 180 school days.

(i) All withdrawals of children from developmental day centers must be reported monthly to the Exceptional Children Division. If another child is approved for placement in a developmental day center, the child's name, date of birth, handicapping condition, and date withdrawn. All withdrawals must be reported no later than 10 days after withdrawal.

(3) Funds for Community Residential Centers

(a) Funds will be allocated to the community residential centers based on a headcount of eligible children with disabilities .

(b) The rate of funds per child shall be determined jointly by the Exceptional Children Division and appropriate personnel from the community residential center. The rate of funds will be allocated at a per child rate determined annually by the Exceptional Children Division and School Financial Services. Special Community Residential Center funds are based on the actual months of service up to 180 school days and shall provide for educational and related services, including personnel, supplies, materials and educational equipment.

(c) The amount of funds allocated to the community residential centers per child and per month will be based on a recommendation to the Associate Superintendent for Financial and Personnel Services by the Director of the Exceptional Children Division.

(d) The local education agency in which the child has legal residence shall certify to the State Board of Education that the placement for any child has been approved by the local superintendent.

(e) All withdrawals of children served in community residential centers must be submitted monthly (no later than 10 days after withdrawal has occurred) to the Director of the Exceptional Children Division. If another child is approved for placement in a community residential center the child's name, date of birth, disabling condition, and date added to roster must accompany the withdrawal notification which lists the child's name, date of birth, disabling condition, and date of withdrawal.

(4) Group Home Placements

(a) The Director of the Exceptional Children Division shall reserve an amount

annually to provide special education and related services for the first-year placement of children with special needs in residential group homes.

(b) A local education agency is eligible for group home funds for the initial year of group home placement only if the child has not been counted in either the December 1 or revised April 1 headcounts or projected regular average daily membership. After the initial placement, the local education agency serving the child will count the child and will be eligible for the state and federal add-ons approved on a prorata annual basis.

(c) Special allotments for children who have not been counted by local education agencies for educational allocations will be made on a prorata annual basis according to the following formula:

(i) regular allocation;
(ii) state add-on (children with disabilities)
(iii) federal add-on (Title VI-B only); plus

(d) upon application for funds for initial year of placement, each local education agency shall submit to the Director of the Exceptional Children Division:

(i) name of child;
(ii) name and location of group home;
(iii) date of birth of each child;
(iv) type of handicapping condition; and
(v) type of program to be provided.

(e) Academically gifted and pregnant students are not eligible for federal funds.

(f) Students certified as Willie M. are eligible for either "Willie M" or group home funds, not both.

(g) Without regard to the place of domicile of a parent or guardian, the cost of free appropriate public education for a child with special needs who is placed in or assigned to a group home, foster home or other similar facility, pursuant to State and federal laws, shall be borne by the local board of education in which the group home, foster home or other similar facility is located. Nothing in this section obligates any local board of education to bear any cost for the care and maintenance of a child with special needs in a group home, foster home and similar facility.

(5) Special Regional Allotments

(a) Provision is made for a separate allotment of teachers to be used in programs serving children with special needs from more than one local school administrative unit; such allotments to be known as Special Regional Allotments.

(b) Special allotments may be made to selected local boards of education for teachers to serve children with special needs for the following purposes:

(i) large general or special hospitals; or
(ii) special regional programs for children with special needs.

(6) Funds shall be appropriated separately for state-arranged staff development activities in the area of exceptional children. Such activities may include workshops, institutes, tuition/fee awards, special studies, and committee meetings. Participants to be trained in these activities may include superintendents, local directors, school psychologists,

support personnel, principals, teachers, state-level personnel, parents, surrogate parents, and hearing officers.

History Note: Statutory Authority G. S. 115C-110; 115C-122;
Eff. October 1, 1978;
Amended Eff. July 11, 1991; December 7, 1989;
July 1, 1986; November 1, 1984; November 1, 1983;
April 1, 1982; September 28, 1981; September 30, 1980;
July 15, 1979.

.1530 TRANSPORTATION

A. Local boards of education are responsible for providing or paying the costs of transportation for children with special needs enrolled in schools or programs under their jurisdiction and are responsible for providing or paying the costs of transportation to any non-residential program, public or private, if the student has been placed in or assigned to that program by the local board of education. Special funds may be provided for this purpose through the Director, School Support Division, Department of Public Instruction and are incorporated in the general transportation plan of the local board. For preschool children with disabilities, payment of such transportation costs must be made from either federal or state preschool program funds.

B. If a child with special needs is assigned to or enrolled in a residential program operated by or under the jurisdiction of the Department of Human Resources or the Department of Correction, the department operating the program or having the program under its jurisdiction or control is responsible for providing or paying the costs of transportation.

C. If a local area mental health center places a child with special needs in an educational program, the local area mental health center shall pay for the transportation of the child to/from the program.

D. The costs of transportation for a child with special needs placed in or assigned to a school or program outside the state shall be paid by the local educational agency placing or assigning the child in that school or program.

E. In no event shall reimbursement for the costs of transportation paid for any one child exceed the School Support Division allowance per mile unless it is demonstrated by the child or his/her parent that such limitation will work a hardship or is unreasonable. This justification must be approved by the local educational agency and appropriate state agency.

History Note: Statutory Authority G. S. 115C-110;
Eff. July 15, 1979;
Amended Eff. July 11, 1991; November 1, 1984.

.1531 MATERIALS, SUPPLIES AND EQUIPMENT

Local boards of education shall determine and make necessary arrangements for providing the materials, supplies and equipment essential to the instructional programs for children with special needs.

History Note: Statutory Authority G. S. 115C-110; Eff. July 15, 1979

History Note: Statutory Authority G. S. 115C-110; Eff. July 15, 1979

.1532 FUNDS TO DEPARTMENT OF HUMAN RESOURCES AND DEPARTMENT OF CORRECTION

Funds appropriated to the State Board of Education from either state or federal resources for special education and related services to children with special needs within the Department of Human Resources and Department of Correction will be distributed on formulas adopted by the State Board based on state and federal guidelines regarding the distribution of these funds.

History Note: Statutory Authority G. S. 115C-110;
Eff. July 15, 1979.

.1533 ORGANIZATION AND ADMINISTRATIVE STRUCTURE OF GOVERNOR'S SCHOOLS

The policies adopted by the State Board of Education for the Governor's Schools of North Carolina are as follows:

A. that the Schools be administered and financed by the State Board of Education as a part of and in connection with the of Exceptional Children Division;

B. that it will be the responsibility of the Director, Exceptional Children Division, to coordinate the efforts of the Governors' Schools' directors with the Division and State Agency and to coordinate the outreach activities of the Governor's Schools;

C. that the State Board of Education appoint and maintain for the Schools an advisory board to be known as "the Board of Governors," said Board to be composed of ten citizens of the state, one of whom shall always be a state associate superintendent; that the other nine members shall include a local superintendent, a teacher, a local director of gifted programs, the president of the Alumni Association of the Governor's Schools, and lay persons and shall be selected so as to represent the six educational districts of the State; that the State Superintendent recommend to the State Board of Education for its approval the members of the Board of Governors for not more than two consecutive three-year terms; that the Board of Governors so constituted select from its membership annually a chairperson and vice-chairperson; that the presidents of the facilities housing the Schools serve as ex-officio members of the Board of Governors; that the Board meet at least three times each year upon call of its chairperson;

D. that the Director, Exceptional Children Division or his designee, serve as secretary to the Board and that the Board be given responsibility recommending the policies which shall govern the administration and supervision of the Schools and for observing and reviewing all phases of the Schools' operation;

E. that the directors of the Governor's Schools are employees of the State Agency; and that in accordance with the recommendations of the Board of Governors and with the approval of the Director, Exceptional Children Division, the Governor's Schools directors will be given the responsibility for administering the affairs of the Schools under the direction of the Director, Exceptional Children Division;

F. that the directors of the Governor's Schools will recommend to the Director, Exceptional Children Division, the number and types of positions required to staff the Schools;

G. that the Director, Exceptional Children Division, will recommend to the Board of Governors for its approval the number and types of positions required;

H. that the directors of the Governor's Schools under the direction of the Director, Exceptional Children Division, be responsible for the development and implementation of the curriculum of the Schools and also for recommending procedures which will ensure the continuous evaluation of all aspects of the Schools and their programs. The Director, Exceptional Children Division, with the approval of the Board of Governors, will prepare and submit to the State Superintendent and the State Board of Education the recommended budget for the operation of the Schools;

I. that the directors of the Governor's Schools periodically submit reports to the Director, Exceptional Children Division, on the status of the Schools and their outreach activities.

History Note: Statutory Authority G. S. 115C-110;
Eff. July 15, 1979;
Amended Eff. December 7, 1989; September 28, 1981.

.1540 PROGRAM COMPLIANCE VISIT

The Department of Public Instruction shall monitor all local educational agencies to determine compliance with appropriate state and federal laws and State Board of Education Procedures Governing Programs and Services for Children with Special Needs.

History Note: Statutory Authority G. S. 115C-113;
Eff. September 30, 1980;
Amended Eff. July 11, 1991; September 28, 1981.

.1541 WILLIE M. CLASS MEMBERS

A. Identification and Certification. Willie M. class members are youth (0-18 yrs. old) certified according to the stipulations constituting the voluntary settlement of Civil Action No. cc79-0294.

(1) To meet the criterion of emotionally, mentally or neurologically disabled the child must have one or more conditions so diagnosed according to ICD-9, AAMD, or DSM III systems of categorization, or meet the criteria set by the North Carolina State Board of Education for these handicapping conditions or meet the statutory definition of mental illness for a minor (G.S. 122C-3 (21)(ii)). These diagnoses must be provided by a physician or psychologist licensed in North Carolina. The historical information and assessment of current functioning, as indicated on the diagnostic forms, should be sufficient to document these handicapping conditions. When the diagnosis is questionable, sufficient additional information shall be provided, as specifically requested. If needed, a second opinion shall be provided by another licensed physician or psychologist.

(2) To meet the behavioral criterion of assaultive, there shall be evidence in the child's

history or current functioning of one or more of the following:

(a) physical attacks against other persons, with or without weapons;
(b) physical attacks against property, including burning;
(c) physical attacks against animals;
(d) self abusive or injurious behavior, including suicide attempts;
(e) threatened attack with a deadly weapon;
(f) forcible sexual attacks.

These behaviors shall meet one or more of the following tests:

(a) The attack shall be sufficiently intense or severe that substantial to person(s) or damage to property could result if there were no intervention.
(b) The behavior shall have occurred with sufficient frequency to be considered a pattern of response (more than 3 times over a period of 6 months). This criterion shall be considered to be met if the child's behavior occurred less than 3 times but resulted in incarceration or institutionalization, with the restrictive environment then "controlling" the behavior(s).
(c) The behavior(s) although possibly provoked, is (are) judged to be extreme or out-of-proportion to the provocation or not an age appropriate reaction.
(d) The behavior(s) has (have) been judged sufficiently disruptive to lead to exclusion from or refusal for admittance to school, job, recreational setting, or treatment program.
(e) The behavior(s) resulted in severe measures of control, e.g. seclusion, restraints, or chemical controls.
(See 2 above)

(3) To meet the criterion of being inappropriately placed in a treatment program, there shall be evidence of the following:

(a) The child has a diagnosis and a prescribed need for treatment that has not been implemented.
(b) The child has an IEP that has not been implemented.
(c) The current treatment or education program must use restrictive measures with the child (e.g.,seclusion, restraints, questionably high dosages of medication) that would not be necessary with more staff, staff trained more specifically in relation to the child's behavior, or if needed components were available.
(d) The treatment plan could be more effectively implemented if the facility provided more security.
(e) The current treatment regimen could be implemented as effectively or more effectively in a less restrictive setting, if one existed, e.g., a setting that allows the child more mobility, more exchange with peers, family, or community outside of the treatment setting, if an array of sufficient support services existed.
    (i) The current treatment regimen could be implemented as effectively or more effectively in a smaller, more home-like setting or in a more normalized environment, if an array of sufficient support services existed.

(ii) The child could live in his/her own home and receive needed services, if an array of sufficient support services existed.

(4) To meet the criterion of being inappropriately placed for children who have been excluded from the class due to a placement in a seemingly appropriate program, there must be evidence that adequate services in a less restrictive setting or a more restrictive setting, as appropriate, are not available. Such evidence will be obtained by a required review of the treatment needs of these children whenever the treatment plan changes or annually if no treatment plan change has occurred.

(5) To meet the criterion of being involuntarily institutionalized or otherwise placed in a residential program, the child shall meet one or more of the following:

(a) Minors who are mentally ill are defined by G.S. 122C-3(21)(ii), and/or eligible for voluntary admission pursuant to Article 5.

(b) Minors referred to an area mental health program for whom residential treatment is recommended pursuant to G.S.7A-647(3) by a Juvenile District Court Judge.

(c) Minors who have been adjudicated delinquent and placed in residential programs as a condition of probation pursuant to G.S. 7A-649(1).

(d) Minors who have been adjudicated delinquent and ordered to a professional residential treatment program pursuant to G.S. 7A-649(6).

(e) Minors committed to a mental health facility or treatment facility pursuant to Article 5 of Chapter 122C as mentally ill or dangerous.

(f) Minors adjudicated delinquent and committed to the custody of the Division of Youth Services pursuant to G.S.7A-649(10).

The certification process begins with the nomination of any student believed to be a potential class member. Any individual or agency may nominate a potential class member by completing a nomination form (available from LEA exceptional children program directors, area mental health centers, DPI Willie M. Programs Section, or DHR Office of Willie M. Services) and submitting it as directed on the form.

B. Provision of educational services.

(1) For students certified and eligible for Willie M. services, the local education agency shall:

(a) provide special education and related services in accordance with an appropriate IEP, and within the scope of Paragraph 9 of the Second Set of Stipulations of the consent decree as follows: "In recognition of the above-state rights, defendants agree and acknowledge their obligation to provide all plaintiffs with appropriate treatment. The scope of defendants' obligation shall be as follows:

(i) Each plaintiff shall be provided habilitation, including medical treatment, education, training and care, suited to his needs, which affords him a reasonable chance to acquire and maintain those life skills that enable him to cope as effectively as his own capabilities permit with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. Such habilitation shall create a reasonable expectation of

progress toward the goal of independent community living. Defendants do not guarantee each plaintiff a "cure", but do guarantee each plaintiff a program of habilitation which is a good faith effort to accomplish the goals set forth herein.

(ii) Each plaintiff shall be provided with the least restrictive, i.e., most normal, living conditions appropriate for that person. Among the factors to be considered in determining the least restrictive living conditions appropriate for the individual are the need to minimize the possibility of harm to the individual and society.

(iii) The goal of habilitation shall be to enable each plaintiff, as appropriate for that individual, to move from:

a living and programming segregated from the community to living and programming integrated with the community;

b more structured living to less structured living;

c group residences to individual residences; and

d dependent living to independent living.

(iv) Each plaintiff shall be provided such placements and services as are actually needed as determined by an individualized habilitation plan rather than such placements and services as are currently available. If placements and services actually needed are not available, the person shall be entitled to have them developed and implemented within a reasonable period. Prior to development and implementation of needed placement and services, the person shall be entitled to placement and services which meet as nearly as possible his actual needs."

(b) participate in the development of each class member's Individual Habilitation Plan (IHP) with local area mental health program staff.

(c) develop special education and related services as needed by each class member, rather than only utilizing such placements and services as are currently available.

C. Funding.

(1) Willie M. funds (PRC 29) are allotted on a needs basis. All requests for funds must include a completed Willie M. Request for Funds form (with appropriate signatures) and a copy of the student's IEP (including a copy of both the DEC 5 and DEC 7). The IEP shall address the following:

(a) present level of performance;

(b) annual goals related to needs identified in assessment information;

(c) instructional objectives related directly to annual goals;

(d) description of special education and related services;

(e) amount of time in general education and description of classes;

(f) beginning dates and duration of services;
(g) measurable outcome evaluation criteria, procedures, and schedules (not teacher observation);
(h) transition plan for students 16 years or older;
(i) vocational plan for students 14 years or older.

(2) Willie M. funds are designated as add-on funds. They are to be used to make the "critical difference" in the successful development and implementation of the IEP. These funds may not be used to supplant or replace other funding sources (e.g., state aid exceptional children funds). They are to be used only to provide services to Willie M. class members. Requests for funds are evaluated according to the following criteria.

(a) Top priority is given to requests that are innovative and creative. Willie M. funds are designated as "add-on" funds that are designed to make the critical difference between success and failure. Examples of innovative programming include, but are not limited to:

(i) parent outreach efforts;
(ii) efforts to return drop-outs to school;
(iii) extended school day programming;
(iv) job skill acquisition linked to academic success
(v) interagency programming designed to implement a "24-hour" plan;
(vi) involvement of community/business agencies and personnel;
(vii) staff development;
(viii) alternative programming that addresses both academics and pro-social behavior;
(ix) direct, systematic instruction that increases instructional time;
(x) alternatives to suspension for behavior(s)that is disruptive but non-violent in nature (e.g., skipping school, use of tobacco products, etc.);
(xi) peer involvement and positive role modeling;
(xii) crisis intervention/liaison specialist;
(xiii) assessment/prescriptive specialist to assist in programming.

(b) All requests for funding are prioritized by addressing the following (e.g., the more of each situation, the higher the priority):

(i) Willie M. group home(s), residential treatment center(s), therapeutic home(s), Individual Residential Treatment (IRT).;
(ii) number of out-of-LEA class members currently served in the LEA;
(iii) presence of day treatment program;
(iv) total number of class members enrolled in LEA;
(v) presence of a student(s) with a low incidence, high cost disability;
(vi) presence of a student considered to have high cost needs due to severe emotional/ behavioral condition;
(vii) Utilization of previous Willie M. funds.
(viii) Other unique situations not described above.

(3) Funds not utilized as approved must be returned as soon as it is determined that their use is not feasible.

D. In case of cooperative treatment and education programs in which the program is located in a facility other than a public school building, the following procedures will apply;

(1) any student who attends the program for his/her full educational services will be counted in the ADM of the local school administrative unit which is supervising the program until the student returns to full-time status in his/her sending school administrative unit;

(2) any student who attends the day treatment and educational program on a part-time basis will remain in the ADM of the sending school administrative unit.

E. Monitoring. The Department of Public Instruction through the Exceptional Children Division shall monitor local school administrative units and/or other facilities that are providing educational services to Willie M. class members to determine if the program is appropriate to meet the needs of the child.

History Note: Statutory Authority G. S. 115C-106(b)
Eff. September 28, 1981
Amended Eff. July 11, 1991; November 1, 1984;
January 1, 1983.